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Supreme Court, U.S.

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APPENDIX

F. ROBERT SEAMER, CL

**In the Supreme Court**  
OF THE  
**United States**

OCTOBER TERM, ~~1970~~ 1971

No. ~~939~~ 70-34

SIERRA CLUB, a California corporation, *Petitioner*

vs.

ROGERS C. B. MORTON, individually, and as Secretary of the Interior of the United States; JOHN S. McLAUGHLIN, individually, and as Superintendent of Sequoia National Park; CLIFFORD M. HARDIN, individually, and as the Secretary of Agriculture of the United States; J. W. DEINEMA, individually, and as Regional Forester, Forest Service, and M. R. JAMES, individually, and as Forest Supervisor of the Sequoia National Forest,

*Respondents*

On Writ of Certiorari  
to the United States Court of Appeals for the Ninth Circuit

Petition for Certiorari Filed November 5, 1970

Certiorari Granted February 22, 1971

## APPENDIX

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# In the Supreme Court OF THE United States

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OCTOBER TERM, 1970

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No. 939

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*Respondents*

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On Writ of Certiorari  
to the United States Court of Appeals for the Ninth Circuit

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1915

# In the Supreme Court

of the United States

Writ of Habeas Corpus

1915

On the application of the undersigned, the Court has granted a writ of habeas corpus to the undersigned, and the undersigned is hereby released from the custody of the United States Marshal at the City of New York.

Attest: My hand and the seal of the Court this 1st day of January, 1915.

## INDEX

	Page
Chronological List of Relevant Docket Entries . . . . .	2
Complaint, filed June 5, 1969 . . . . .	3
Notice of Motion and Motion for Preliminary Injunction, filed June 5, 1969 . . . . .	13
Sample Term Special Use Permit . . . . .	15
Sample Special Use Permit . . . . .	23
Plaintiff's Affidavit of J. Michael McCloskey including exhibits filed June 5, 1969 . . . . .	25
Defendants' Affidavit of Richard E. Deffebach, filed June 27, 1969 . . . . .	159
Defendants' Affidavit of W. S. Davis, filed June 27, 1969 . . . . .	164
Defendants' Affidavit of Donn B. Tatum, filed June 27, 1969 . . . . .	174
Defendants' Affidavit of John S. McLaughlin, filed June 27, 1969 . . . . .	180
Plaintiff's Affidavit of Matthew P. Mitchell, filed July 1, 1969 . . . . .	183
Memorandum of Decision of the United States District Court, filed July 23, 1969 . . . . .	186
Preliminary Injunction, filed August 4, 1969 . . . . .	200
Defendants' Joint Answer, filed August 12, 1969 . . . . .	203
Decision of the Ninth Circuit Court of Appeals, entered September 16, 1970 . . . . .	208

**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES**

June 5, 1969	Plaintiff filed complaint and notice of motion for preliminary injunction with supporting documents
July 23, 1969	Memorandum of decision re grant of preliminary injunction filed
Aug. 4, 1969	Preliminary injunction filed
Aug. 12, 1969	Answer filed
Sept. 19, 1969	Notice of appeal filed
Sept. 16, 1970	Opinion and judgment of the Court of Appeals for the Ninth Circuit entered

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ORIGINAL  
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JUN - 5 1969

CLERK, U. S. DIST. COURT  
 SAN FRANCISCO

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,  
*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States; JOHN S.  
 McLAUGHLIN, individually and as Superintendent  
 of Sequoia National Park; CLIFFORD M.  
 HARDIN, individually and as Secretary of Agriculture  
 of the United States; J. W. DEINEMA,  
 individually, and as Regional Forester, Forest  
 Service; and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National Forest,  
*Defendants.*

**COMPLAINT**

Civil Action

No. 51464

**JURISDICTION**

1. This action is brought under 5 U.S. §§ 701-706  
 (Administrative Procedure Act § 10), 28 USC § 1331(a), 28  
 USC § 1361, and 28 USC § 2201, (Declaratory Judgments  
 Act).

2. The matter in controversy exceeds \$10,000 exclusive  
 of interest and costs and arises under the federal law as herein-  
 after more fully appears.

### FIRST CLAIM FOR RELIEF

3. Plaintiff SIERRA CLUB is a non-profit corporation organized and operating under the laws of the State of California, with its principal place of business in San Francisco, California since 1892. Membership of the club is approximately 78,000 nationally, with approximately 27,000 members residing in the San Francisco Bay Area. For many years the SIERRA CLUB by its activities and conduct has exhibited a special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country, regularly serving as a responsible representative of persons similarly interested. One of the principal purposes of the SIERRA CLUB is to protect and conserve the national resources of the Sierra Nevada Mountains. Its interests would be vitally affected by the acts hereinafter described and would be aggrieved by those acts of the defendants as hereinafter more fully appears.

4. (a) Defendant WALTER J. HICKEL (hereinafter "HICKEL") is Secretary of the Interior of the United States, and the matters hereinafter referred to as pertaining to "Interior" or the "National Park Service" are within the "Department of Interior" of which he is the chief officer. His predecessor in office was Stewart L. Udall (hereinafter "Udall").

(b) Defendant JOHN S. McLAUGHLIN (hereinafter "McLAUGHLIN") is Superintendent of Sequoia National Park.

(c) Defendant CLIFFORD M. HARDIN (hereinafter "HARDIN") is Secretary of Agriculture of the United States, and the matters hereinafter referred to as pertaining to "Agriculture" or the "National Forest Service" are within the "Department of Agriculture" of which he is the chief officer. His predecessor in office was Orville W. Freeman (hereinafter "Freeman").

(d) Defendant J. W. DEINEMA (hereinafter "DEINEMA") is Regional Forester of the Forest Service for the region which includes the Sequoia National Game Refuge.



(e) Defendant M. R. JAMES (hereinafter "JAMES") is the Forest Supervisor in the National Forest Service in charge of the Sequoia National Forest.

5. In or about February 1965, the National Forest Service (hereinafter "Forest Service") solicited bids for the construction and operation of a year-round commercial-recreational resort in and near the Mineral King Valley (hereinafter "Mineral King") which is located in the Sequoia National Game Refuge of California. The game refuge is more fully described in the Act of July 3, 1926 (P.L. 69-465, 26 Stat. Ch. 744, Sec. 6).

6. In or about January 1966, the Forest Service granted to Walt Disney Productions, Inc. (hereinafter "Developer") a preliminary permit authorizing it to make surveys and prepare plans for development of Mineral King.

7. On or about 21 January, 1969, the Forest Service approved the proposed plan of Developer for the commercial-recreational development of Mineral King. Plaintiff is informed and believes and based upon such information and belief alleges that under the approved plan the development will have at least the following features:

(a) An "alpine village" and associated structures permanent in nature including parking structure, restaurants, lodging facilities, sewage treatment facilities, swimming and ice skating facilities which will physically occupy and affect areas far in excess of 80 acres of land;

(b) Ski-lifts, cleared slopes, lift lines, trails, roads, a cog-assisted railroad, water and stream control features, avalanche dams and other recreational "improvements" throughout 13,000 acres directly affecting by actual construction and development an area occupying nearly 400 acres of land;

(c) The year-long use of the resort will include the presence in said area of an estimated 1,200 vehicles per hour each way on an access road which is proposed to cross Sequoia National Park to the development, 3,600 parked vehicles, the lodging of 3,310 transient guests per night, up to 8,500 skiers

per day, the permanent housing of 700 or more employees and 986,000 or more total visitors per year as early as 1978; and

(d) The exact nature of other details is not yet known to plaintiff, which prays leave to insert them when discovered.

8. The Forest Service has announced and plaintiff alleges on information and belief that defendants HARDIN, DEINEMA and JAMES intend to issue interim special use permits for the actual commencement of construction and operation of the described development in or about the summer of 1969. In the meantime, the Forest Service has issued a permit under which employees of Developer continue to make studies and arrangements for the construction and operation of the commercial-recreational development. Also in the meantime, the Forest Service continues to assign personnel and expend public monies in making studies and other preparations for the eventual operation and administration of the Mineral King development.

9. The approval of the described plans and the impending issuance of permits to Developer for construction and operation in accordance with those plans and the acts of defendants HARDIN, DEINEMA and JAMES in association therewith are in excess of statutory jurisdiction, authority and limitations, are not in accordance with law, are arbitrary, capricious and constitute an abuse of discretion in that (among other things) the described acts are:

(a) in violation of the provisions of the Act of March 4, 1915, as amended July 28, 1956 (38 Stat. 1101, 70 Stat. 708; 16 USC § 497) which limits the size, terms and manner of occupation of lands for resorts and associated facilities in the national forests and which is far exceeded by the subject development;

(b) in violation of the provisions of the Act of June 4, 1897, as amended (30 Stat. 35, 33 Stat. 628, 76 Stat. 1157 and 78 Stat. 745; 16 USC § 551) regarding the permit power of the Secretary of Agriculture, which has been and will be exceeded;

(c) beyond the jurisdiction of the said defendants in that responsibility for conservation of game, birds and wildlife in Sequoia National Game Refuge and other such sanctuaries was transferred to the Secretary of the Interior by the Reorganization Act of 1939 (53 Stat. 1431, Ch. 195, Sec. 4; 53 Stat. 813);

(d) in violation of the provisions of the Act of July 3, 1926 (P.L. 69-465, 1926 Stats. Ch. 744, Sec. 6) establishing the Sequoia National Game Refuge whose purposes are contravened by the subject development;

(e) in violation of Forest Service rules and regulations, and in violation of applicable principles of administrative law, in that it has declined and refused to hold public hearings on the question of whether Mineral King should be developed, or how it should be developed for commercial-recreational purposes or for any other purpose; and

(f) in violation of Forest Service rules and regulations, and in violation of fundamental principles of administrative law in that it has acted without due consideration of the factors which it is required to consider in reaching a decision on whether Mineral King should be developed, or how it should be developed, for recreational purposes.

10. There exists a present controversy between plaintiff and defendants with respect to the matters hereinbefore set forth.

11. Defendants have acted, are acting and threaten to continue to act in violation of the law, as hereinbefore set forth. Unless restrained, they will cause, or permit to be caused, damage to Mineral King which will be irreparable, in part, for many human generations, and irreparable, in part, for all eternity.

12. There are no administrative remedies available to plaintiff, and plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays as hereinafter set forth.

## SECOND CLAIM FOR RELIEF

13. Paragraphs 1-9 of the First Claim for Relief are incorporated herein by reference.

14. In order to provide access to the proposed commercial-recreational development at Mineral King, the Forest Service sought permission from the National Park Service and the Secretary of Interior for the construction of a highway, 9.2 miles of which would cross Sequoia National Park.

15. In or about December 1967, Secretary Udall granted formal approval of the routing of that highway (which would be constructed and maintained by the State of California). Approval for a right-of-way, construction and operation was expressly left open pending further study concerning the design standards of the highway. Plaintiff alleges on information and belief, however, that agreement on design standards is near and upon such agreement, defendants HICKEL and McLAUGHLIN will issue their approval for a right-of-way, construction and operation of the highway across Sequoia National Park and that the State of California will let contracts for the commencement of construction upon issuance of that approval.

16. Plaintiff is informed and believes and based upon such information and belief alleges that the purpose of the proposed highway would be simply to provide a means to cross the Sequoia National Park and serve the Mineral King development rather than to serve any fundamental purpose of the Park. Plaintiff further alleges on information and belief that the construction of said road in Sequoia National Park would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park and would impair the enjoyment of the park for future generations.

17. The approval of the routing of said access road and the impending issuance of authorization for rights-of-way, construction, and operation of said road and the acts of defendants HICKEL and McLAUGHLIN in connection therewith are in excess of their statutory jurisdiction, authority and limitations,

are not in accordance with law, are arbitrary, capricious and constitute an abuse of discretion in that (among other things) the described acts are:

(a) in violation of the provisions of the Act of August 25, 1916, as amended (39 Stat. 535, as amended; 16 USC § 1) which prohibits uses of the national parks which do not conform to the fundamental purposes of said parks;

(b) in violation of the provisions of the Act of September 25, 1890 (26 Stat. 478, 16 USC § 41 and § 43), establishing Sequoia National Park as a public park and imposing the duty upon the Secretary for the "preservation from injury of all timber, natural curiosities or wonders within said park, and their retention in their natural conditions";

(c) in violation of regulations requiring a public hearing with respect both to the general corridor to be occupied by the proposed road and to its design, as set forth in 34 Fed. Reg. 1405 (January 29, 1969). Purported repeal of those regulations was not in accordance with 5 U S C § 553(b) and therefore is without legal effect. Nevertheless, unless restrained, defendants HICKEL and McLAUGHLIN threaten to proceed to permit the proposed road to be constructed across Sequoia National Park without first holding the public hearing required by the afore-said regulations; and

(d) in violation of Park Service rules and regulations, and fundamental principles of administrative law, in that defendants HICKEL and McLAUGHLIN have acted without due consideration of the factors which they are required by law to consider in reaching a decision upon whether an enlarged road across Sequoia National Park should be permitted for purposes not benefiting that Park and, if so, what type of road should be permitted.

18. There exists a present controversy between plaintiff and defendants with respect to the matters hereinbefore set forth.



19. Defendants HICKEL and McLAUGHLIN have acted, are acting, and threaten to continue to act in violation of the law, as hereinabove set forth. Unless restrained, they will cause, or permit to be caused, damage to Sequoia National Park which will be irreparable, in part, for many human generations, and irreparable, in part, for all eternity.

20. There are no administrative remedies available to plaintiff, and plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays as hereinafter set forth.

### PRAYER

WHEREFORE, plaintiff prays judgment as follows:

1. Against defendants HARDIN, DEINEMA and JAMES, and each of them, for a judgment declaring that the approval given on or about 21 January, 1969, of the Walt Disney Productions, Inc. Mineral King Development Plan by defendants HARDIN, DEINEMA and JAMES, and each of them, and the threatened issuance of permits for construction and operation in furtherance thereof is in violation of law and therefore null and void, to wit, in violation of each and all of the following: 16 USC § 497; 16 USC § 551; P.L. 193, § 4 (the Reorganization Act of 1939); the Act of July 3, 1926, establishing the Sequoia National Game Refuge; and fundamental principles and requirements of administrative law.

2. For both a preliminary and permanent injunction enjoining defendants HARDIN, DEINEMA and JAMES, and each of them, and their successors in office and the respective employees, servants, attorneys and agents thereof, and all other persons, in active concert or participation with them, from granting any permits, rights of way, approvals, or taking any action whatsoever toward the implementation of said Development Plan above referred to or any other development of like or similar nature thereto.

3. Against defendants HICKEL and McLAUGHLIN, and

each of them, for a judgment declaring that the aforementioned approval of the routing of a highway across and through the Sequoia National Park by defendants HICKEL and McLAUGHLIN, and each of them, and/or their predecessors in office, and the threatened issuance of approvals for rights of way, construction and operation of a highway across and through said Sequoia National Park is in violation of law and therefore null and void, to wit, in violation of each and all of the following: 16 USC § 1; 16 USC §§ 41, 43, 34 Fed. Reg. 1405 (January 29, 1969); Park Service rules and regulations; and fundamental principles and requirements of administrative law.

4. For both a preliminary and permanent injunction enjoining defendants HICKEL and McLAUGHLIN, and each of them, their successors in office and the respective employees, servants, attorneys and agents thereof and all other persons, in active concert or participation with them, from taking any action whatsoever toward authorizing or approving (i) design standards or rights of way of said highway or any other of similar or like purpose; (ii) construction or maintenance of said highway or any other of similar or like purpose by the State of California or any other entity or person.

5. Grant to plaintiff such other further relief as to this Court may appear just and proper, including costs and disbursements.

Dated at San Francisco, June 5, 1969.

FELDMAN, WALDMAN & KLINE  
LEO E. BORREGARD  
LELAND R. SELNA, JR.  
MATTHEW P. MITCHELL

By Leland R. Selna, Jr.

Attorneys for Plaintiff

ROBERT W. JASPERSON  
GREGORY ARCHBALD

Sierra Club

Of Counsel

STATE OF CALIFORNIA  
CITY & COUNTY OF SAN FRANCISCO

} ss. No. 51464

J. MICHAEL McCLOSKEY, being first duly sworn, deposes and says:

That he resides at Alameda County, California; that he is the Conservation Director and Chief of Staff of The Sierra Club, a non-profit California corporation, plaintiff herein; that he has read the foregoing complaint, and that he is informed and believes the matters therein to be true and on that ground alleges that the matters stated therein are true.

J. Michael McCloskey

J. Michael McCloskey

Subscribed and sworn to before me  
this 4th day of June, 1969.

LINDA A. UMBERTUS  
Notary Public

My Commission expires:

LINDA A. UMBERTUS  
NOTARY PUBLIC - CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
My Commission Expires January 20, 1973

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 SAN FRANCISCO

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, a non-profit California corporation,  
*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States; JOHN S.  
 McLAUGHLIN, individually and as Superin-  
 tendent of Sequoia National Park; CLIFFORD M.  
 HARDIN, individually and as Secretary of Agri-  
 culture of the United States; J. W. DEINEMA,  
 individually, and as Regional Forester, Forest  
 Service; and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National Forest,  
*Defendants.*

NOTICE OF  
 MOTION AND  
 MOTION FOR  
 PRELIMINARY  
 INJUNCTION

Civil Action

No. 51464

TO DEFENDANTS ABOVE NAMED

PLEASE TAKE NOTICE that on June 30, 1969, at 10:00 A.M. or as soon thereafter as counsel can be heard before the Law and Motion Department of the above-entitled Court, 450 Golden Gate Avenue, San Francisco, California, plaintiff SIERRA CLUB, a non-profit corporation, will move the Court for a preliminary injunction enjoining the above-named defendants, and each of them, and their respective agents, servants, employees and attorneys and all persons in active concert and participation with them in accordance with and as prayed for in

the verified complaint herein and filed and served herewith pending the final hearing and determination of this action. Said motion will be made upon said complaint, the Affidavit of J. Michael McClosky and the Memorandum of Points and Authorities, all served and filed herewith, and upon the pleadings, records and files in the action and such evidence as may be adduced at the time of hearing.

Dated at San Francisco, June 5, 1969.

FELDMAN, WALDMAN & KLINE  
LEO E. BORREGARD  
LELAND R. SELNA, JR.  
MATTHEW P. MITCHELL

By LELAND R. SELNA, JR.  
Attorneys for Plaintiff  
Sierra Club

ROBERT W. JASPERSON  
GREGORY ARCHBALD

Of Counsel



United States Department of Agriculture Forest Service <b>SAMPLE</b> <b>TERM SPECIAL USE PERMIT</b> <i>(of March 4, 1915, as amended July 24, 1934, RENEWED/RENEWED PERMIT)</i>		NAME OF PERMITTEE	KIND OF USE
		DATE OF PERMIT	FILE CODE
COUNTY S	STATE California	FOREST Sequoia	RANGER DISTRICT Tule River

Permission is hereby granted to (Successful prospect)

of \_\_\_\_\_ hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements for the period of 30 years from the date hereof:

National Forest land in portions of sections 15, 22, 27, 28 and 34, <sup>in fractions and large</sup> Mount Diablo Meridian, Sequoia National Forest, constituting the sites physically occupied by capital improvements other than roads, parking areas, and refuse and sewage disposal areas, as shown on the map attached to and made part hereof. Sites in other sections may be added by future amendment [if public interest warrants]

This permit covers not to exceed 80 acres and/or \_\_\_\_\_ miles and is issued for the purpose of:

Constructing, operating, and maintaining a winter and summer recreation development consisting of improvements and services specifically authorized by this permit in Clause 23.

The exercise of any of the privileges granted in this permit constitutes acceptance of all the conditions of this permit.

~~It is understood that the permittee shall agree to the following conditions in its acceptance of this permit: The permittee shall be bound by the provisions of the Forest Service Manual and the rules and regulations of the Forest Service. The permittee shall be bound by the provisions of the Forest Service Manual and the rules and regulations of the Forest Service. See Clause 19.~~

~~Notwithstanding to the contrary of anything herein contained, the permittee shall be bound by the provisions of the Forest Service Manual and the rules and regulations of the Forest Service. See Clause 19.~~

Provided, however, That the charges for this use shall be readjusted as of, and effective on, the beginning of each 5-year period from the due date of the first annual payment in order to place the charges on a basis commensurate with the value of the improvements. See Clause 19.

(2) Construction or occupancy and use under this permit shall begin within 3 months ~~and construction shall begin within 180 days from the date of the permit. This use shall be actually commenced at least 150 days each year, unless otherwise authorized in writing.~~

(3) Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Tree or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current stumpage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber in other than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

1700-3 (Rev. 1/51)

EXHIBIT 2

condition, and safety acceptable to the forest officer in charge.

8. This permit is subject to all valid claims.

9. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

10. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed seasons established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

11. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

12. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

13. No Member of or Delegate to Congress or President Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

14. Except as provided in Clause 16 below, upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but this will not relieve the permittee of liability for the cost of their removal and the restoration of the site.

15. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and to enable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises will be authorized by a permit to him, which may be for the unexpired term of this permit or for such new period as the circumstances justify.

16. In case of change of address, permittee shall immediately notify the forest supervisor.

17. The temporary use and occupancy of the premises and improvements herein described may not be sublet by the permittee to third parties without the prior written approval of the forest supervisor and the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

18. This permit may be terminated upon breach of any of the conditions herein.

19. If during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his authority shall determine that the public interest requires termination of this permit, this permit shall terminate upon thirty days' written notice to the permittee of such determination, and the United States shall have the right thereupon to purchase the permittee's improvements, to remove them, or to require the permittee to remove them, at the option of the United States, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration shall be fixed by mutual agreement between the United States and the permittee and shall be accepted by the permittee in full satisfaction of all claims against the United States under this clause. *Provided*, That if mutual agreement is not reached, the Forest Service shall determine the amount and if the permittee is dissatisfied with the amount thus determined to be due him he may appeal the determination in accordance with Regulation A-10 (36 CFR 211.2) and the amount as determined on appeal shall be final and conclusive on the parties hereto; *Provided further*, That upon the payment to the permittee of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

20. The permittee agrees that the amount which the United States shall be required to pay for improvements in accordance with Clause 19 shall in no event exceed \$\_\_\_\_\_, and that this instrument may be introduced in any judicial proceedings for the acquisition of such improvements by the United States as the stipulation of the permittee and the United States with regard to the maximum amount which the United States shall be required to pay for the improvements.

21. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the preceding printed clauses will control.

22. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ 19 to 41 attached hereto and made a part of this permit.

DATE	SIGNATURE OF ISSUING OFFICER	TITLE
DATE	SIGNATURE OF PERMITTEE	

19. This use is classified as Class III and the fees due the United States shall be calculated according to the following schedule:

\_\_\_\_\_ percent of net sales and other income.

A minimum fee of \$ \_\_\_\_\_ per annum is hereby established for this permit which shall be a minimum occupancy fee, due in advance, and not subject to refund.

The permittee will send to the Forest Supervisor, Sequoia National Forest, Porterville, California, on or before (2 months after close of permittee's fiscal year) of each year a statement of net sales and of other income resulting from the operations under this permit, or a profit and loss statement or other evidence, satisfactory to the Forest Supervisor, of the business transacted by the permittee.

The Forest Supervisor may require that any such statement be sworn to, and shall have the further right to examine the permittee's accounting records and supporting data.

The Forest Service shall have the right to require the permittee to maintain an acceptable accounting system, and shall have the right to require the permittee, at his expense, to have his books audited by an accountant acceptable to the Forest Service and furnish to the Forest Service a copy of the audit report.

Upon receipt of a satisfactory statement from the permittee, the Forest Supervisor will calculate the fees due according to the above percentage and will bill the permittee for this amount, less the amount of the minimum fee paid in advance, provided the latter is less than the calculated fee. If the minimum fee paid in advance is greater than the calculated fee, no refund will be made.

In consideration for this use, the permittee shall deposit with the Regional Fiscal Agent, U. S. Forest Service, 630 Sansome Street, San Francisco, California, a check, draft, or money order made payable to the Forest Service, USDA, as follows:

1. On or before (Date of beginning of permittee's fiscal year) of each year \$ \_\_\_\_\_ which is the established minimum fee for this use.
2. Within 30 days of receipt of statement from the Forest Supervisor, the amount calculated in accordance with the above percentage of the net sales and other income reported by the permittee and accepted by the Forest Supervisor.

Definition of Net Sales. The term "net sales", for the purpose of calculating special-use fees, shall be the gross amounts derived from all sources of the business conducted on the permitted area, or connected therewith, minus the following items:

- a. Returned merchandise, refunds, and allowances.
- b. State sales tax.
- c. Federal excise taxes required to be collected by the permittee from the customer and paid by him to the Government (for example, taxes on theater tickets, and other admissions).
- d. Federal retailer's excise taxes required to be paid by permittee to the Government (for example, taxes on sale of furs, jewelry, toilet preparations, luggage, etc.).
- e. State gasoline tax, regardless of whether or not paid by permittee to the State taxing authority.
- f. Amounts remitted to States representing proceeds from the sale of hunting and fishing licenses. Any commissions or fees received by permittees for selling such licenses are includable in "net sales".

20. Bonds. To guarantee the fulfillment of the conditions contained in Clause 22 of this permit, the permittee will furnish the Forest Service a surety bond in the sum of Twenty Five Thousand Dollars (\$25,000) or in lieu of surety bond, shall deposit into a Federal Depository, through the Regional Fiscal Agent specified in Clause 19 of this permit, cash in the sum of Twenty Five Thousand Dollars (\$25,000). As soon as security for the performance of the terms of Clause 22 or the settlement of claims incident thereto is no longer necessary, deposits in lieu of surety bond will, subject to the conditions set forth in the sentence immediately following, be returned to the permittee without interest. The permittee agrees that all moneys deposited under this permit may, upon failure on his part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied as far as may be to the satisfaction of his obligations assumed hereunder, without prejudice whatever to any other rights and remedies of the United States.

21. Insurance. The permittee shall indemnify the United States against any liability for damage to life or property arising from the permittee's occupancy or use of National Forest lands, facilities, or equipment under this permit, or by the permittee's customers or guests while using the permitted area; provided this shall not be construed to indemnify the United States against its own negligence.

At all times when any of the operations authorized by this permit are open to the public, the permittee shall have in force public liability insurance covering damage to persons in the minimum amount of \$100,000 in the event of death or injury to one individual and the minimum amount of \$500,000 in the event of death or injury to more than one individual for which the permittee may be liable in connection with the occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. The permittee shall require the

insurance company to send an authenticated copy of his insurance policy to the Forest Service immediately upon its issuance. This policy shall contain a specific provision or rider to the effect that the policy will not be canceled or its provisions changed or deleted before 30 days written notice to the Forest Supervisor, Sequoia National Forest, Porterville, California, by the insurance company.

#### CONSTRUCTION AND OPERATING REQUIREMENTS

(See printed Clauses 2 and 3)

22. (This Clause will consist of a schedule for completion of each major development as determined following review and approval of the successful proponent's developmental and architectural plans. Such plans will be attached to and become a part of the permit, either physically or by appropriate reference ).

No modification of the approved plans will be permitted unless specifically authorized by the Forest Supervisor in writing.

23. The design, construction, maintenance and operation of tramways and lifts shall conform to the American Standard Safety Code for Aerial Passenger Tramways. Specific exceptions may be made by the Forest Supervisor in writing. The design, construction, and maintenance of operation of lifts shall also conform to the Aerial Passenger Tramway Safety Orders of the California Division of Industrial Safety. In addition: (1) Tower and terminal sites shall be inspected in advance of construction by a Forest Officer. Protective measures as he prescribes shall be provided. (2) Safety stops on rope tows shall be of the flying ring type.

24. It is required that a California registered architect or registered engineer prepare site and building plans. Drawings must be signed by the registered architect or engineer with their registration number. State Division of Housing approval also must be obtained.

25. The permittee will assure slope stabilization and prevent soil loss throughout the permitted area by carrying out the provisions of a winter sports area erosion control plan. Said plan, when approved, shall be attached to and made a part of this permit.

26. Brush and debris resulting from all clearing shall be disposed of in a manner and at a time satisfactory to the forest officer in charge.

27. The permittee, shall, before the start of public service operations, and prior to the start of operations each year thereafter, join with the Forest Service in preparing a snow safety plan; which shall be attached to and become a part thereof upon approval of the Forest Supervisor. Such plans to include the following as a minimum: (1) Special safety devices and testing. (2) Operator requirements at each lift or tow. (3) Required first aid equipment; transport or location of caches. (4) Ski slope signing



and flagging. (5) Availability of qualified Red Cross first aiders and accident reporting. (6) Avalanches, snow slide, or other natural hazards needing control. (7) Restriction of ski slopes to skiing, i.e., control of waiting lines, snags, toboggans. (8) Ski patrol requirements. (9) Operator instructions on use of lift, tow, to novices. (10) Tow track and slope maintenance. (11) Parking area traffic control and attendant requirements.

28. The execution of all parts of the snow safety plan is the responsibility of the permittee.

29. A fire prevention and control plan adequate in the judgment of the Forest Supervisor to the risks and hazards of this use shall be prepared and placed in effect by the permittee. The Fire Plan, when approved, shall be attached to and become a part of this permit.

30. All signing pertaining to the resort and its operation shall be submitted for approval of the Forest Supervisor prior to erection. Operational signs will be required in order to:

- (1) Identify the area as a special use development on the Sequoia National Forest.
- (2) Furnish visitors with information as to length, elevation difference and classification of ski trails.
- (3) Inform the public where medical supplies and first aid patrolman may be found.
- (4) Warn visitors of avalanche hazards.
- (5) Encourage compliance with established winter sports etiquette.

The permittee in his advertisements, signs, circulars, pamphlets, letter-heads, or like material, shall refrain from misrepresenting in any way, either the accommodations provided or the status of this permit, or of the area covered thereby or adjacent thereto and shall identify the operation as being located within the Sequoia National Forest.

31. No lines of business other than those listed in this permit may be conducted without the written approval of the Forest Supervisor.

32. The permittee will, upon request of the Forest Supervisor, submit his schedule of charges for review and, if in the Forest Supervisor's judgment he determines the rates to be excessive or out of line with rates charged for similar services elsewhere, he may require the permittee to show cause why they should not be reduced.

33. The Director of the ski school must be fully certified as a ski instructor by a recognized certifying body of the U. S. Ski Association or one of its divisions. About one third of the remaining instructors must hold associate or better certificates, with the aim to get all instructors fully certified. The permittee will designate areas where ski instruction will be conducted to avoid conflict with general public use.

34. The permittee shall provide an organized, trained, and adequately equipped ski patrol to serve according to the snow safety plan of this permit. Ski patrolmen qualifications, training, and equipment, will equal or exceed the standards of the National Ski Patrol System. Patrolmen may be provided on a paid or voluntary basis, or both. Paid ski patrolmen on patrol duty will not perform routine operating duties.

#### GENERAL

35. ~~This permit is for land occupancy only~~ and does not provide for the furnishing of road maintenance, water, fire protection, snow removal or any other such services.

36. There is specifically reserved a right of free and unrestricted access, in, through, and across the land covered by this permit for officers and employees of the United States in the performance of their official duties and for users of National Forest land, and purchasers of National Forest products when not inconsistent with the exercise of the authorized use herein granted.

37. Lifts and tramways shall be open to the free use of Forest Service personnel responsible for the administration or inspection of this recreation area, as designated by the Forest Supervisor.

38. The permittee shall indemnify the United States against any liability for damage to life or property arising from the permittee's occupancy or use of national forest lands, facilities, or equipment under this permit or by the permittee's customers or guests while using the lift or tramway-served area; provided this shall not be construed to indemnify the United States against its own negligence.

39. The permittee, if a corporation, shall furnish evidence of authority for execution of this agreement on behalf of said corporation. Such corporation agrees to furnish the Forest Supervisor with a current list of officers of its governing body, and to maintain a representative of the corporation in residence on this site, fully authorized to conduct corporation business with the Forest Service.

40. In connection with the performance of work under this permit, the permittee agrees as follows:

(1) The permittee will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The permittee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Forest Service setting forth the provisions of this non-discrimination clause.

(2) The permittee will, in all solicitations or advertisements for employees placed by or on behalf of the permittee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The permittee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Forest Service advising the said labor union or workers' representative of the permittee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The permittee will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The permittee will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the Forest Service and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the permittee's non-compliance with the non-discrimination clauses of this permit or with any of the said rules, regulations, or orders, this permit may be cancelled in whole or in part and the permittee may be declared ineligible for further government permits in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The permittee will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The permittee will take such action with respect to any subcontract or purchase order as the Forest Service may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the permittee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Forest Service, the permittee may request the United States to enter into such litigation to protect the interests of the United States.

41. This permit shall have no force or effect until it has been signed by the permittee and the Forest Service.

Date \_\_\_\_\_


Permittee \_\_\_\_\_

Date \_\_\_\_\_

CHAS. A. CONNAUGHTON  
Regional Forester

By \_\_\_\_\_ Issuing Officer \_\_\_\_\_

## Area Permit - (Supplemental to Term Permit)

 <b>SAMPLE</b> <b>SPECIAL USE PERMIT</b> Act of June 4, 1897, 30 STAT. 378 This permit is revocable and nontransferable		NAME OF PERMITTEE	NAME OF LAND
		DATE OF PERMIT	FILE NO.
COUNTY	STATE	COUNTY	SECTION
5	California	Sequoia	Tule River

Permission is hereby granted to \_\_\_\_\_ (Successful applicant)

hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

National Forest land in portions of sections 13, 22, 27, 28, and 34, Mount Diablo Meridian, Sequoia National Forest, shown on the map attached to the Term Permit of \_\_\_\_\_ (date) issued to the above permittee, as needed for the work of the facilities and improvements specified in Clause 22 of the term permit.

This permit covers \_\_\_\_\_ acres and/or \_\_\_\_\_ miles and is issued for the purpose of:

Developing and maintaining ski slopes, trails, parking areas, refueling and sewage disposal areas, roads, etc. in conjunction with the facilities and improvements specified in Clause 22 of the foregoing Term Permit.

The exercise of any of the privileges granted hereby constitutes acceptance of all the conditions of this permit.

1. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the period from \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ 19\_\_\_\_, and thereafter annually on \_\_\_\_\_ (see Clause 19 of Term Special Use Permit) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_):

REMARKS: \_\_\_\_\_

2. Construction or occupancy and use under this permit shall begin within \_\_\_\_\_ months, and construction, if any, shall be completed within \_\_\_\_\_ months, from the date of the permit. This use shall be actually exercised at least \_\_\_\_\_ days each year, unless otherwise authorized in writing.

3. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

16. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the preceding printed clauses will control.

17. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ of the \_\_\_\_\_ and \_\_\_\_\_ of the \_\_\_\_\_ foregoing Form Special Use Permit.

This permit is accepted subject to the above conditions

Date \_\_\_\_\_

Permittee \_\_\_\_\_

DATE	SIGNATURE OF ISSUING OFFICER	TITLE

FELDMAN, WALDMAN & KLINE  
 LEO E. BORREGARD  
 LELAND R. SELNA, JR.  
 MATTHEW P. MITCHELL  
 2700 Russ Building  
 San Francisco, California 94104  
 Telephone: 981-1300

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, a non-profit California corporation,  
*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States; JOHN S.  
 McLAUGHLIN, individually and as Superintendent  
 of Sequoia National Park; CLIFFORD M.  
 HARDIN, individually and as Secretary of Agri-  
 culture of the United States; J. W. DEINEMA,  
 individually, and as Regional Forester, Forest  
 Service; and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National  
 Forest,

*Defendants.*

**AFFIDAVIT**

Civil Action

No. 51464

I, J. MICHAEL McCLOSKEY, being sworn, say as follows:

I presently am staff director of the Sierra Club. For the past three years, I have been its Conservation Director, and before that, I was assistant to the Sierra Club President.

Since February 1965, I have been a member of the Sierra Club Staff having primary responsibility to become and remain informed about proposed private developments of the Sequoia National Game Refuge area of the Sequoia National Forest. I have been the official spokesman for the Club on that subject. The area involved is known as Mineral King. Mineral King is



located 55 miles east of Visalia, California and is both geographically and ecologically part of the high Sierra. The game refuge of which Mineral King is a part is a 15,000 acre enclave bounded on three sides by Sequoia National Park. It is also ecologically and geographically part of the Park, and lies within the same watershed. It has essentially the same flora and fauna as the Park, including some giant Sequoias at lower elevations.

In February, 1965, the Forest Service of the United States, Department of Agriculture with administrative responsibility for the National Forests, issued a prospectus for a proposed winter and summer recreational development at Mineral King. This prospectus solicited bids from private developers for the construction and operation of a year-round recreation resort.

Commencing on June 7, 1965, the Sierra Club made written and telegraphic requests to the Forest Service for public hearings with respect to the policy considerations and desirability of a development of the type outlined in the prospectus and in the six bids received in response to it. Examples of these requests are attached hereto and bear the following dates and exhibit numbers:

<i>Date</i>	<i>Exhibit</i>
August 7, 1965	A
November 3, 1965	B

Each of the requests for hearing was denied.

In a letter of July 1, 1965, Regional Forester Charles A. Connaughton, writing to Dr. William E. Siri of the Sierra Club, stated: "On March 13, 1963 (sic), Congressman Hagen conducted a public hearing in Visalia to determine what could be done to expedite development. We have the record of this hearing and it discloses no opposition." (Attached hereto and marked Exhibit "C".) As more recently acknowledged by the Forest Service, the hearing was conducted in 1953 rather than 1963. (Information release entitled "Mineral King - A Planned Recreational Development", Forest Service, February 1969

hereinafter referred to as "February release".) It was not a congressional hearing, but rather organized by the Tulare County Chamber of Commerce. We are aware of no public hearing in which the advisability of the development of a commercial-recreational complex at Mineral King was the issue.

In December 1965, still without hearings, the proposal of Walt Disney Productions, Inc. ("Developer") to build a resort designed principally as a ski resort but for summer use also was selected from among the six bids received. In January 1966, the supervisor of the Sequoia National Forest granted it a three-year preliminary permit. The permit authorized Developer to make surveys and plans and provided that a thirty-year term special use permit covering not to exceed 80 acres and a supplemental "annual" or "revocable" special use permit for the development and operation of Mineral King would be issued prior to the expiration of the preliminary permit if the plans as submitted had been approved, if a contract had been awarded for a significant part of the necessary all-season road, and if funds had been programmed for completion of the road within five years of the award of the first road contract. A copy of said preliminary permit is attached hereto and marked Exhibit "D".

The Forest Service prospectus called for a certain minimum number of facilities which themselves would cause a seriously adverse impact upon Mineral King. I am informed and believe that no maximum has been established and Developer's proposal would result in an impact many times more serious. The prospectus called for four ski lifts; Developer's proposal was for twenty-two lifts and gondolas. The prospectus called for a parking capacity of 1,200 automobiles; Developer's proposal is for 3,600 vehicles. The prospectus called for resort accommodations for 100 overnight visitors; Developer's proposal contemplates a capacity of 3,310 persons. The Forest Service estimated a cost in the range of 3 million dollars. Developer presently plans to spend 35.3 million dollars to "develop" Mineral King. (Document entitled "Mineral King - A Planned Recreational Develop-

ment", Forest Service, February 1969.) The ultimate magnitude of the development cannot be predicted. In a brochure released in 1967, Developer stated:

"When we go into a new project, we believe in it all the way. That's the way we feel about Mineral King. We have every faith that our plans will provide recreational opportunities for everyone.

"All of us promise that our efforts now and in the future will be dedicated to making Mineral King grow to meet the ever-increasing public need. *I guess you might say that it won't ever be finished.*" (Emphasis added.) ("The Disney Plans for Mineral King, copyright 1967, Walt Disney Productions, attached hereto as Exhibit "E".)

On January 27, 1969, Developer's Master Plan, embodying the foregoing features, was approved by the Forest Service, with the only further condition precedent to the actual granting being the letting of the first contract for road construction on national forest land in the Mineral King enclave. I am informed and believe that this contract could be let at any time and certainly no later than by the end of the summer of 1969.

The Mineral King Valley covers an area approximately one-sixth the size of the valley at Yosemite National Park. I am informed and believe that Yosemite is visited in a peak weekend by 40 thousand persons. Projections of weekend usage at Mineral King are for 12 thousand persons. Thus, the concentration of persons at Mineral King will be almost twice that found at Yosemite. This concentration will occur at an elevation 3,800 feet higher than Yosemite where the short growing season and thinner air produce an extremely fragile ecology.

Surface access to Mineral King is available over a narrow, partially paved, two-lane, winding seasonal road in the vicinity of Hammond, California about 25 miles to the west. The road generally follows the East Fork of the Kaweah River to its Mineral King terminus. It was in existence for many years before the surrounding land was incorporated into the Park. On

July 16, 1965, the California Legislature voted to add Highway 276 to the State Highway System. That highway was intended to provide access to the Mineral King development. (Memorandum from Department of Public Works – Division of Highways, to California Highway Commission of September 8, 1967, attached hereto and marked Exhibit "F".)

I am informed and believe that on or about October 24, 1967, the California State Highway Commission adopted the recommendation of the Division of Highways and approved an all-weather, high-speed highway consisting of two lanes with half mile long passing lanes every few miles. The road, which will follow approximately the routing of the old road, is estimated to cost \$25,000,000. This sum is payable by the State, with the exception of a \$3,000,000 federal construction grant from the Economic Development Administration. The central 9.2 miles of the proposed routing is within Sequoia National Park, under the administrative jurisdiction of the National Park Service, U.S. Department of the Interior. East of Park, the routing is through the National Forest. (*Id.*) Attached hereto and marked Exhibit "G" is a drawing entitled "Route 276 Study" which depicts the road.

I am informed and believe that in December 1968, the Secretary of the Interior, without hearings, approved the route proposed by the State and further, that he intends to grant a final right-of-way permit within the next several days. This conduct is at odds with a regulation of the Department of the Interior adopted on January 28, 1969, which requires both corridor and design hearings with regard to major road projects in National Parks which have a substantial social, economic or environmental effect. It is equally at odds with the Secretary's announcement on April 26, 1969, that he is asking the National Park Service to revise its master planning procedures to provide for "broader public review and comment" on all phases of the National Park System, and not just roads. On April 21, 1969, the Secretary purported to revoke the regulation calling for



hearings in the case of road building. (News release attached hereto and marked Exhibit "H".)

I am aware of the following additional matters which will affect the unique park and recreational values of Sequoia National Park and the Sequoia National Game Refuge which have not been the subject either of hearing or of public explanation by the federal agency concerned:

### FOREST SERVICE

1. *The Use Proposed for Mineral King by Developer is in Violation of its Status as a National Game Refuge:* The Sixty-ninth Congress, in connection with legislation regulating the management of Sequoia National Park, also established the enclave of Sequoia National Forest within which Mineral King is located as a game refuge with the purpose of the legislation "to protect from trespass the public lands of the United States and the game animals which may be thereon." (Act of July 3, 1926, P.L. 69-465, 26 Stats. Ch. 744, Sec. 6) The Secretary of Agriculture was left with the power to authorize other uses of the lands involved only "so far as may be consistent with the purposes for which said game refuge is established." (*Id.*) I am aware of no finding that the 35 million dollar project proposed by Developer which anticipates daily use exceeding 8,500 persons is a usage consistent with the status of the area involved as a game refuge, nor is such a finding rationally possible. I am aware that Mr. J. C. Fraser, Chief Water Projects Branch, Department of Fish and Game, State of California, has stated as follows:

"Your fourth question regards the potential effect of development in the Mineral King Game Refuge on game. This Department has not made specific studies nor prepared reports regarding the effects of this development on wildlife. We can say, however, that in an extensive development such as the Disney proposal, considerable wildlife habit would be lost and wildlife would suffer from human encroachment." (*Emphasis added.*)

(Letter of November 27, 1968, to Mr. B. K. Jones, copy attached hereto and marked Exhibit "I")

2. *The Forest Service has Agreed to Permit the Development with Permanent Facilities of more than 80 Acres of National Forest Property:* A Forest Service publication of February 1969 entitled "Mineral King - A Planned Recreational Development" states at page 8, as follows:

"How Much Land Will The Disney Company Control?

- It will not really control any. It will have

- Under a thirty-year term permit permission to use a maximum of eighty acres upon which to erect *most* major facilities, and

- Under an annual permit *it will be permitted to construct lifts* and trails throughout about 13,000 acres . . ." (*Emphasis added.*)

Moreover, the Forest Service sample "annual" or "revocable" permit attached to its Mineral King Prospectus states that it is issued for the purpose of:

"Developing and maintaining ski slopes, trails, parking areas, refuse and sewage disposal areas, roads, etc., in conjunction with the facilities and improvements specified in Clause 22 of the foregoing Term Permit."

(See copy of permit attached hereto and marked Exhibit "J".)

Based upon these publications, I am informed and believe that the Forest Service intends to permit the location of permanent facilities by Developer upon game refuge property outside of the 80 acres.

3. *The Proposed Road is a Serious Threat to Unique Redwood Trees Known as Sequoia Gigantea:* Mr. L. M. Whitfield, formerly the Supervisor of Sequoia National Forest, has stated that "Dr. Hartesveldt, a leading expert on the Sequoia gigantea, has studied the proposed location and design and sees no threat to any redwoods." (Letter May 15, 1968, to Mr. Jack Hope, a copy of which is attached hereto and marked Exhibit "K".)



Dr. Hartesveldt actually has said "... there are a total of at least 103 giant sequoias below the proposed highway. Of these, 45 are in a position of possible jeopardy because of road construction." (Hartesveldt, *Study of the Possible Changes in the Ecology of Sequoia Groves in Sequoia National Park to be Crossed by the New Mineral King Highway* for California Division of Highways dated December 19, 1966, attached hereto and marked Exhibit "L")

4. *The Development Would Produce a Severely Adverse Impact upon Mineral King in its Natural State:* Mineral King Valley is a U-shaped basin rimmed by 12,000 ft. peaks rising 3,000 to 4,000 ft. above the valley. It is an alpine setting reminiscent of the Alps. In proposing the development of Mineral King, Developer justified a bid fee of 2% of net receipts in part as follows:

"Grooming and manicuring of most slopes without destroying the naturalness of the area, particularly for intermediates, will require extensive bulldozing and blasting in most lower areas and extensive rock removal at higher elevations. This is especially true for the Mosquito, Eagle, and White Chief Bowls and the lower Farewell Canyon area." ("A Proposal For The Development of Mineral King From Walt Disney Productions - 1965")

Attached hereto and incorporated herein is a sketch of Developer's master plan bearing the denomination "Exhibit E" and marked Exhibit "M" hereto. It depicts a portion of the "grooming" referred to in the foregoing quotation. It suggests the enormous interference with nature and with the game refuge status which is being proposed.

Some of the best evidence of the magnitude of the interference is to be found in Forest Service correspondence. Developer's Master Plan was submitted to the Forest Service on January 9, 1969. On January 21, 1969, the Forest Service Director of Wildlife Management stated to the Director of the Division of Recreation:

"After one quick review of the Mineral King Master Plan, I have a few comments to offer:

"1. *Horse concession.* — It appears that this could cause serious problems in sanitation and esthetics where there is very limited area in which to operate. Presumably, this would be a large operation involving at least 50 horses. The trails would have to be surfaced to control erosion. More serious, however, would be sanitation and the need to supply all needed forage.

"2. *Alternatives for sewage disposal.* — The plan shows 2 primary sewage facilities and provides that effluent will be filtered through soil enroute to the stream drainage. With the large quantity of daily sewage discharge expected, I would question whether the soil can adequately handle the effluent. Should alternatives be considered, such as piping effluent out of the canyon, etc.?"

"3. *Check dams to collect debris.* — The Plan is not clear on the purpose or function of these dams. Presumably they are to prevent damage from flooding and from debris accumulation. Is a dry-dam type structure planned? Also, what is the source of the debris? Will it result from timber cutting on the ski runs?"

"In conclusion, *I would hope that we study the impacts of this concession for a long time before permitting another one.*" (Emphasis added.)

(Memo of W. O. Hanson to Richard J. Costley of January 21, 1969, attached hereto and marked Exhibit "N")

Also on January 21, 1969, the Director of Range Management wrote:

"To what degree has the compatibility of planned horse programs with resource needs been determined? The projected use by people, in itself, will have a very real impact on these fragile soils and vegetation without the additional effect of horse use. Any horse activity as well as others influencing soils and vegetation could well utilize the services of an ecologist during the planning stage."

(Memo of R. M. DeNio to Richard J. Costley of January 21, 1969, attached hereto and marked Exhibit "O")

The Master Plan was approved by the Forest Service six days later, on January 27, 1969.

Chief of the Forest Service Division of Recreation, and deeply involved in the Mineral King project, is Mr. W. S. Davis. On January 9, 1967, he wrote to the Sequoia National Forest Supervisor, in part, as follows:

"Engineering may not have been aware that in accepting the Disney proposal, we agreed to the concept of a village with underground automotive service facilities for deliveries, maintenance, etc. *This brings with it a need for land modification, earth moving, and possibly stream channel changing beyond what we might normally permit.* The underground roadways and chambers must either be tunneled or built partially on the surface, boxed in and backfilled. The report favors the latter, *which means a great deal of earth and debris moving.* But we can require that all this be accompanied by an effective landscaping program.

"... The impact is certain to be heaviest at the village site and on the valley floor. By accepting the development proposal we have also accepted that some effect on fishery values, streamflow, vegetation, soil, and other resources must be provided for." (*Emphasis added.*)

(Memorandum attached hereto and marked Exhibit "P")

On January 6, 1967, the Range & Wildlife Management section of the Forest Service wrote to the Recreation section with respect to preliminary site studies at Mineral King, as follows:

"*The total basic concept of development appears badly biased in orientation toward a highly artificial, continued situation, without any real attention to ecological factors and needs to multiple use management.* The extent and nature of proposed alteration of the basin is unacceptable to us — the damages extend beyond effects on fish and wildlife, and these alone are critical.

"Specifically, stream diversions and channel treatment, flood and debris control, surface water supply

development, and sewage disposal proposals are all of a nature we find severely damaging or unacceptable.

*"It is recognized that development of high intensity year-round recreational use in this restricted fragile sub-alpine area is bound to result in pronounced impacts and certain unavoidable changes." (Emphasis added.)*

(Memorandum attached hereto and marked Exhibit "Q")

I am informed and believe that no significant changes in Developer's proposal have been made in response to the foregoing critical comments, some of which were made over two years ago.

5. *The Avalanche Danger Presented at Mineral King has not been Adequately Considered:* Mineral King has been identified as an area of high avalanche danger. (Hasher-Gibson *Winter Survey 1947-48* for Mineral King, Sequoia National Forest.) Attached hereto and marked Exhibit "R" is a plat showing such avalanches in the winter of 1947-48, a year of light snow. This winter has witnessed the death of the occupant of a cabin owned by Developer located on the proposed site of the village which is part of its proposal. Within the last several weeks, a number of structures in Mineral King Valley have been destroyed or heavily damaged by avalanches.

On November 18, 1966, Mineral King Staff Specialist P. J. Wyckoff wrote to Developer with respect to preliminary site studies. He stated in part, as follows:

*"The original premise was that the new village would straddle Monarch Creek extending down to Coral Rock. This, of course, puts the village across the present avalanche path."*

(Letter attached hereto and marked Exhibit "S")

6. *The Forest Service Did Not Complete Ecological Studies Relating to the Location of Unusual Species and Fragile or Scarce Habitats and the Means of Protecting Them Prior to Approving the Project:* I am informed and believe that there have been no studies completed within the Sequoia National

Game Refuge which are pertinent to these subjects. Support for this belief includes the memorandum of January 6, 1967, quoted in part at page 10, *supra*.

7. *To the Extent that is has Attempted to Assess the Impact of Developer's Program upon Mineral King, the Forest Service has Failed to Add in the Impact of an Adjacent Development to be Located on Privately Owned Property:* I am informed and believe that the owners of 160 acres of land in the Silver City area within three miles of the area of Developer's proposed project are planning a residential-commercial development which will include condominium apartments and a motel lodge with a capacity of 1,000 persons overnight, a shopping center and a service station. On May 1, 1969, the "Visalia Times-Delta" reported that this project, under consideration by Tulare County, will cost 20 million dollars. I am informed and believe that the impact of this project has not been considered in studies of impact upon Mineral King and upon the National Park and National Forest across which the access road to it would be built.

#### **NATIONAL PARK SERVICE**

1. *The Proposed Access Highway as it Crosses Sequoia National Park: Does Not Serve a Fundamental Park Purpose:* The road is intended to provide access from one point outside the park to a private development on the other side. It was not proposed by the Park Service, was not designed primarily and fundamentally to serve the Park, and any benefit to the Park is incidental. The portion of the Park through which it travels was not the subject of development plans at the time that the road was first proposed, nor is it now.

In 1967, the Director of National Park Service requested that a committee establish standards for guidance and control of construction and use of park roads. The result of that request was a report on April 11, 1968, from the Park Road Standards Committee. That report was forwarded to the Secretary of the Interior with the request that he give his approval and that the



recommendations be implemented within the Department immediately. He did approve recommendations including the following:

"The Service needs to communicate widely that parks are for leisurely travel and that park roads are purposely designed for low speed . . . people need also to appreciate that the purposes of park roads are completely different from those of the Federal and State system. Park roads are not continuations of the State and Federal network. They should neither be designed — nor designated — to serve as connecting links. *Motorists should not be routed through park roads to reach ultimate destinations.* Within parks, no road or other circulation system should be designed simply as a connecting device to link points of interest . . . (Emphasis added.)

"*Approval of Design and Construction* 'To insure that all National Park roads, or other circulation systems, are in harmony with fundamental park purposes, the following considerations must precede approval of design and construction:

'1. A professional ecological determination must be made that the resulting effects on park values — including such aspects as wildlife habitat and mobility, drainage, stream flow, and climatic effects of paved areas — will be minimal.' (Emphasis added.)

I am informed and believe that none of the prescribed standards have been met in the case of the Mineral King Highway.

2. *There Remains Confusion Between Park Service and Forest Service Concerning the Capacity, Size and Operational Limits of the Road which Will Lead Either to the Conclusion that There is Not Enough Access to Make Mineral King Profitable or that an Even Wider and Immensely More Damaging Highway Must Be Established.* For several years, the Department of Interior refused to approve a right-of-way across Sequoia National Park; when it finally did, the Department made clear that the road must be limited to two lanes without any passing lanes. See letters dated October 16, 1968, and November 19, 1968, from the Secretary of the Interior to the



Secretary of Agriculture, a letter dated November 19, 1968, from Edward A. Hummel to Edward P. Cliff and a letter dated April 1, 1968, from Karl T. Gilbert to James C. Cooper, these letters being attached hereto and marked Exhibits "T" through "W", respectively. It insisted that the State of California adhere to the design standards established by Mr. John Clarkeson, a consulting engineer in highway design. Mr. Clarkeson's report contains the following observations:

~~"The primary purpose of the proposed highway is to serve the Mineral King development. It is anticipated that up to 14,000 persons will be served here each day. Of these, approximately two-thirds will be day-time visitors (traveling to and from the area in the same day), and one-third will be overnight visitors staying one or more nights at Mineral King.~~

"In addition, at Silver City, at the approach to Mineral King Canyon, there is proposed another development of year-round residence units, the present number of which has not been firmed up. There are privately-owned camps, ranches, etc., along the transportation corridor; these are few and far as their effect in traffic load is concerned, but they must be considered by any future undertaking . . .

"My observations on Route 198 from Visalia to Three Rivers on my visit to the area confirms my past experience with this type of design. The safety lane as designed by California is, in my opinion, very *unsafe* and should not be used . . .

"Regarding the entire design, our information is that the single directional peak hour flow *is anticipated at 850 vehicles per hour. This is a very high one-directional load for a two-lane highway and can be handled only with reasonable traffic control.* Further, if two-thirds of the 14,000 daily visitors to the Mineral King area go in and out within one day, this will place a load of 9,400 visitors making a round trip in 2,500 vehicles. To keep the hourly peak to 850 per hour, only one-third of these can leave in any one hour . . .

"Unless some control or other means is considered this two-lane road does not look at all adequate for a

14,000-a-day visitor load where so many will be one-day visitors." (*Emphasis added.*)

(*Report on Road to Mineral King*, The Clarkeson Engineering Company, Incorporated, attached hereto and marked Exhibit "X")

Meanwhile, the Forest Service was stating that:

"The peak load capacity would be about 1,200 cars per hour." (Forest Supervisor L. M. Whitfield's letter of May 15, 1968, to Mr. Jack Hope, Exhibit "Y".)

This inconsistency on a matter which is regarded as the key limiting factor in the use of Mineral King is important because the immediate pressure upon the Park Service to establish additional lanes either by reason of financial difficulty or a perpetual traffic snarl at Mineral King would be difficult to withstand. Four lanes would result in the devastation of the entire corridor of Sequoia National Park across which the road would be located.

3. *The Road Would Produce a Severely Adverse Impact upon the Park in its Natural State.* As stated in the Clarkeson report:

"Obviously, any road construction to present-day standards could not be built through this area without affecting the ecology of the area. Within the road prism (cuts and fills) plant life would, of course, be disturbed, and since the top soil for regenerating plant life is sparse, early vegetative cover on cut and fill slopes would be very slow in developing.

"More than that, the road, if primarily based on cut and fill construction, would be a barrier to wild life and visitor movements throughout this area of the park. Animals and men would have to cross the road to the risk not only of such persons and wild life but also to the risk of users of the highway. (*Report on Road to Mineral King, supra.*)

4. *Developer Must Rely upon a Future Approval by Congress of a Power Line Crossing Sequoia National Park.* Based

upon a statement made to me on April 25, 1969, by Rober D. Hicks, Project Manager for Developer, I am informed and believe that Developer's intention is to meet the electrical needs of the Mineral King development by contracting for the location of a 66,000 volt power line *across* Sequoia National Park in the general vicinity of the proposed road. I am aware of no authorization by Congress to permit such a power line.

Congress presently has before it proposed legislation establishing Sequoia National Game. Refuge as a part of Sequoia National Park. I am informed and believe that the granting of permits and approvals to permit construction of the development and of this road would cause a diminution of the very park values presently being considered by Congress.

J. MICHAEL McCLOSKEY  
J. MICHAEL McCLOSKEY

STATE OF CALIFORNIA }  
CITY AND COUNTY OF } ss.  
SAN FRANCISCO }

Subscribed and sworn to before me  
on June 4, 1969.

LINDA A. UMBERTUS  
Notary Public

LINDA A. UMBERTUS  
NOTARY PUBLIC - CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
My Commission Expires January 20, 1973



by David Johnson in the San Francisco Post

## SIERRA CLUB

1415 Tenth, San Francisco 4

August 7, 1965

Mr. Edmund Cluff, Chief  
Forest Service  
Department of Agriculture  
Washington, D.C.

Dear Mr. Cluff:

On June 7 the Sierra Club wrote to the Regional Forester for Region 5, Charles Cunningham, requesting that bids not be accepted on the proposed ski development at Mineral King in the Sequoia National Forest until a public hearing is held on the desirability of such developments at that site. On July 1, 1965 Mr. Cunningham replied with a denial of that request.

The Sierra Club hereby appeals to you to have Mr. Cunningham reconsider his denial and grant our request. We believe that our request for a hearing is meritorious and that Mr. Cunningham's denial is based on a number of misapprehensions of fact. We are attaching a copy of his letter of denial. We believe that it is both desirable and practical to hold a hearing despite the fact that bids are to be received on August 31, 1965. We suggest that no action be taken on acceptance of a bid for a six month period during which a hearing be held to allow the public to consider the various development proposals put forth and their impact on the fragile area. The specific reasons that cause us to believe that a hearing is needed and the procedures we suggest are detailed below.

One. Though there is no requirement in present federal regulations that public hearings be held on management decisions on the national forests, it is sound public policy to hold hearings on major management decisions. This ensures that the Forest Service is responsive to public wishes in exercising its broad delegated authority. A growing number of Congressional directives that public notice and hearings be held on reservation and policy questions makes it clear that Congress wants the public to be consulted in advance of major policy decisions affecting the national forests. Moreover, there is ample precedent for the Forest Service holding such hearings. In recent years hearings have been held on both the Hiram (Oregon) and Linnell Backcountry (Montana) cases involving development of undisturbed but relatively undeveloped national forest land.

Indeed, it is coming to be Forest Service policy to hold hearings on important land use questions when there is sufficient public interest. The question of whether the Mineral King area should be developed is an important land use question for these reasons:

(1) Mineral King has special natural characteristics and recreational attributes of great value not found elsewhere. They are described by a recent visitor in the following manner: "Although their scenic and ecological features are reminiscent of many other Sierra regions, Mineral King and environs are

EXHIBIT



By David Adams in the Lake Arrowhead Area

## SIERRA CLUB

Mill Tower, San Francisco 4

-2-

unique. They are unlike any other roadhead that we have ever visited. Where else in the Sierra does a primitive roadhead reach to the headwaters of a major river (east Fork of the Kaweah)? Where else does a road provide such direct access to so many alpine passes (five or more)? Yet the two mile long valley is essentially unspoiled. Mineral King's U-shaped basin is rimmed with 12,000 foot peaks rising 3000 to 4000 feet above the valley from whose flanks streams, cascades, and torrents tumble into the narrow floor, which is usually a flood plain and wash for the river. A number of lakes are within less than a two hours walking distance of the valley, which is a trail center where at least seven routes radiating in all directions open up the southern part of Sequoia-Kings Canyon National Park, Sequoia National Forest, the magnificent Big Horn Sierra to the west, and the Little Horn territory below Farewell Gap. The massive, self-contained ecological unit of Mineral King itself (protected in a National Game Refuge) and the surrounding country are one of the finest wilderness-type areas we have ever seen" (Frederick H. Kaler, July 1965).

(2) The question of what happens to Mineral King becomes additionally important when the magnitude of the developments envisaged are considered. By the year 2000 with the planned developments, the Forest Service recreation plan forecasts over 1 million visitors annually crowding into this small valley. Up to 14,000 visitors on peak days are foreseen bringing 5000 cars onto the 51 acres of development land. Whether such a crushing impact should be invited is an important question.

(3) Finally the question of developing Mineral King becomes important because of the immense sums that may become involved in its development. Some estimate that up to \$20 million may be spent on developments at the site alone, with estimates of the cost of the access road running as high as \$25 million. Proposals to invest possibly as much as \$45 million on public lands should be subjected to thorough public scrutiny.

Now. The Mineral King area deserves the added consideration of a public hearing because Congress has made it clear that it wants this land treated more as a park than as regular national forest land, though it has left the land under the jurisdiction of the Forest Service. Because of the mineralization of the area and its mining history, the area was not added to Sequoia National Park though it is an enclave within it. However, the management of the area was entrusted in the Act of July 3, 1936 relating to the management of the park. The Act established the Mineral King area as a Federal Game Refuge and directed the Forest Service to protect the animal life there as within the National Park. The reasons that caused the area to be left out of the park plus the special legislation dealing with it in conjunction with the park suggest that Congress wants the area and its natural character given special care. Proposals to alter that character, thus, should be subjected to ample public scrutiny.





by David Adams in the San Francisco Chronicle

## SIERRA CLUB

Mill Valley, San Francisco 4

-3-

Three. Despite occasional consideration of proposals to develop Mineral King over the last two decades, there has been very little public understanding of what is involved. As conservation groups have begun to perceive the magnitude of the impact planned, opposition has begun to mount. Most visitors queried recently at the site have opposed the planned developments. Many cabin owners there oppose it. Some newspapers do. It has been widely implied that no one, perhaps excepting the Sierra Club, opposes the development of Mineral King. This is not true. A public hearing would reveal accurately what the balance of public opinion is.

In his letter of July 1 to us, Regional Forester Connaughton says: "On March 13, 1963 Congressman Wagon conducted a public hearing in Visalia to determine what could be done to expedite development. We have the record of this hearing and it discloses no opposition." This statement is inaccurate. The hearing was not held in 1963 but 1953. Thus there has been no hearing on the question in over a dozen years. Moreover, the hearing record does disclose some opposition, particularly among cabin owners.

The 1953 hearing cannot be regarded as a fair hearing on the question now before the public. The question at that hearing was one of choosing between two alternate development plans: one for light development and the other for intensive development. The question now is whether development should take place at all. The 1953 hearing was not a Congressional hearing as Mr. Connaughton implies. Rather it was organized by the Tulare County Chamber of Commerce to promote development. Invitations were sent to those interested in promotion. It is no wonder that little opposition is found in the record. Of the 82 invitations extended by the Chamber, only 3 went to conservation groups. None made unequivocal statements of support. A staged meeting by a Chamber of Commerce held a dozen years ago to test development plans that are now obsolete can hardly be regarded as a federal model of an impartial and timely hearing on an important question of public policy.

A new hearing should be held now on the plans currently under consideration with fair notice to all of the interested public. The hearing should be organized by the public agency responsible, not by interested private parties.

Four. Regional Forester Connaughton suggests that as Forest Service planning for the Mineral King area has been continuous since 1949, there has been adequate public knowledge of the direction and intent of Forest Service management. As a member of the public, the Sierra Club must say that its knowledge of the record does not show continuous planning but a discontinuous situation. Following issuance of a prospectus in 1949 and failure to attract





By David Adams in file with American Road

## SIERRA CLUB

Mills Tower, San Francisco 4

any qualified bidders, plans to issue a new prospectus in 1952 were dropped. Not until the 1960's was planning on the project resumed with the preparation of a multiple use plan providing for development there and the sudden issuance of a prospectus in February of this year. Most curiously, the prospectus was issued before a recreation management plan for the area was completed (not completed until June 10, 1965). Thus much of the planning for the area is of recent origin, and the public has not had time to absorb its implications. In fact, the issuance of the prospectus prior to the completion of the functional plan for recreation management in the area suggests some deliberate intent to rush developments forward rather than a proper observance of the sequence of planning.

The new recreation management plan foresees a range and magnitude of development not heretofore envisaged. The predictions of visitation by the year 2000 bring the public policy choices into clear perspective. With the completion of this plan and the preparation of specific development schemes, the public has concrete alternatives before it. These alternatives deserve to be presented at a public hearing so that all may understand what is at stake.

**Five.** Many important questions of public policy need airing at a hearing. Among the most important are these:

(1) Can the Mineral King area accommodate the intensities of usage that are predicted to come with development without undue damage to the natural ecology of the area? It is a fragile timberline area.

(2) Is it in the public interest to grade the dead-wilderness character of the Mineral King area for massive development and commercialization? Would development of other sites serve skiing adequately (such as Broke Cabin, Jordan Peak, Weaver Lake, and Sherman Peak)?

(3) Has the avalanche danger of the area been adequately studied? The only winter study done of the area was done by Ludwig Haeber in 1947-48. The winter was an exceptionally light one and not typical of normal conditions. Though the report felt the avalanche hazard that winter was controllable, it also recommended further winter study before development was permitted (recommendation #10, p. 12; see also pages 6-7: "Mineral King Sequoia National Forest Winter Survey, 1947-48," by Ludwig J. Haeber and James W. Gibson, July 1948). Have further winter studies been completed to adequately guarantee public safety?

(4) As the excessive costs of a modern access road have been the principal deterrent to development in the past, is the Forest Service inviting proposals for federal subsidies to develop the access road by continuing to issue prospectuses? Though the Forest Service denies this intent, will the effect of the development proposal be that the federal government will end up



by Axel Adams in the Palo Alto Area

## SIERRA CLUB

Mill Tower, San Francisco 4

paying a share of the access road costs to "sell out" private investors?

(5) Though the Forest Service plans to try to limit the extent of developments, will the presence of them nevertheless generate irreversible pressures for further satellite commercialization? How will control be exercised and maintained?

Fig. Despite the fact that bids will be received on August 31 of this year, there is still an opportunity for a hearing to be held. The fact that the Forest Service has invited bids does not obligate it to accept any of them (nor even a disclaimer on p. 3 of the prospectus). All the Forest Service is obligated in good faith to do is to study them closely to see what they meet its notions of public need. A hearing will help the Forest Service to see if it is correct in estimating public need.

On receipt the Forest Service can notify the bidders that no decision on acceptance of any of them will be made for a six month period. Then sometime early this fall the Service can schedule a public hearing at a principal city in the area and explain the provisions of its multiple use plan, recreation plan, and development prospectus. Then it can compare and explain the development schemes proposed. The developers themselves then could be invited to comment in turn. Following that the interested public would be invited to comment. Advertisements for the hearing would be widely circulated to all interested parties and throughout the press.

Following the hearing, the Forest Service could evaluate the hearing record and make a judgment about public need and desires. This judgment could lead to acceptance of one of the bids, or modification of its previous plans, or rejection of all of the bids. But whatever it did, the Forest Service would have the assurance that it acted with understanding of the public's wishes and that it had acted fairly.

All that the Sierra Club asks is that a fair procedure, and one with a wide precedent, be employed. We are confident that the benefit of a hearing will redound both to the public and the Forest Service.

Very truly yours,

*Michael McCloskey*  
Michael McCloskey  
Assistant to the President  
for the President

cc: Charles Cunningham  
Secretary Orville Freeman

John Warner  
 Fred Eise  
 R. Ives  
 Bob Marshall  
 Sen. Knechel

Cong. J. Cochran  
 Cong. John Moss

SCM  
 11/1 John

## TELEGRAM

M. McCloskey  
 Sierra Club  
 1050 Mills Tower  
 San Francisco, California

November 3, 1965

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Honorable Orville Freeman, Secretary  
 Department of Agriculture  
 Washington, D.C.

YOUR PRESS RELEASE OF OCTOBER 27 REGARDING DEVELOPMENT OF A SKI RESORT IN THE MINERAL KING AREA OF CALIFORNIA HAS JUST COME TO OUR ATTENTION. SIERRA CLUB IS DISTURBED AT IMPLICATION IN THE RELEASE THAT A DECISION HAS DEFINITELY BEEN MADE TO GO AHEAD AND GRANT A PERMIT TO ONE OF THE BIDDERS. AT OCTOBER 22 MEETING WITH ASSISTANT SECRETARY JOHN BAKER WE WERE LEAD TO UNDERSTAND THAT THE QUESTION OF WHETHER TO GO AHEAD WITH DEVELOPMENT WAS STILL AN OPEN QUESTION, AS WELL AS THE QUESTION OF TO WHOM A BID MIGHT BE AWARDED IF THE DECISION WERE MADE TO GO AHEAD.

DECISION TO GO AHEAD RAISES DISQUIETING QUESTIONS ABOUT THE DEPARTMENT'S POLICIES OF PROVIDING FOR PUBLIC PARTICIPATION IN THE DECISION MAKING PROCESS. THE DEPARTMENT HAS REPRESENTED THAT IT IS ITS POLICY TO HOLD PUBLIC HEARINGS IN ADVANCE OF DECISIONS ON MATTERS OF SIGNIFICANT PUBLIC INTEREST. SURELY IF THERE WERE EVER SUCH A MATTER, THIS IS IT.

THE QUESTION IS SIGNIFICANT FOR THREE REASONS. ONE, LAND USE PATTERNS OF A FRAGILE AREA WITH A SPECIAL LEGISLATIVE HISTORY SIMILAR TO THE PARK THAT SURROUNDS IT ARE BEING DRASTICALLY CHANGED. VISITOR DENSITIES UP TO 14,000 PERSONS PER DAY ARE BEING INVITED. TWO, GREAT SUMS OF MONEY FOR CONTESTING PLANS AND CONCEPTS ARE AT STAKE, INVOLVING PERHAPS \$40 MILLION, WITH POSSIBLE PUBLIC OBLIGATIONS INVOLVED AS WELL. THREE, ADMINISTRATIVE PROPOSALS FOR THE AREA HAVE BEEN WITHHELD FROM THE BROAD PUBLIC UNTIL LINES OF COMMITMENTS WERE ALREADY UNDERTAKEN.

THESE COMMITMENTS ARE STILL NOT IRREVOCABLE. THE PUBLIC HAS A RIGHT TO KNOW AND EXPRESS ITSELF BEFORE SUCH CRITICAL DECISIONS ARE MADE. IF HEARINGS ARE NOT HELD ON QUESTIONS AS MOMENTOUS AS THE FUTURE OF MINERAL KING, THEN THERE IS LITTLE HOPE THAT THEY WILL BE HELD ON OTHER QUESTIONS TOO. A MATTER OF PRINCIPLE IS AT STAKE: THE PUBLIC'S RIGHT TO BE HEARD AT THE RIGHT TIME AND BEFORE THE RIGHT FORUM. WE ARE LOOKING TO YOU TO HONOR THIS PRINCIPLE.

Michael McCloskey  
 Conservation Director  
 Sierra Club

EXHIBIT 18

①-3c file

RECEIVED JUL 2 1965

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
CALIFORNIA REGION  
600 BARRANS STREET  
SAN FRANCISCO, CALIFORNIA 94111

IN REPLY REFER TO

2310  
July 1, 1965

Dr. William E. Siri  
Sierra Club  
Mills Tower  
San Francisco, California

Dear Dr. Siri:

I have your letter of June 7 outlining the action taken by the Board of Directors on May 1 - 2.

As some members of your Board know, the recreation development of Mineral King has been foremost in Forest Service planning since before 1949, when the first development prospectus was issued. At that time no bids were received. On March 13, 1963 Congressman Hagen conducted a public hearing in Visalia to determine what could be done to expedite development. We have the record of this hearing and it discloses no opposition.

Subsequently, the Sequoia National Forest incorporated winter recreation development of this area as a major feature of a multiple use plan which was prepared months ago. Recently a prospectus has been issued inviting bids for development. Prior to issuance of this latest prospectus all public agencies which might be affected were consulted, including the National Park Service. Their concurrence was obtained. Consultation on this matter with representatives of the Sierra Club has taken place at intervals, as many of your members know. I outline these deliberations and actions merely to indicate the widespread consideration which has been involved in relation to Mineral King development.

I know the Sierra Club is well aware of the public demand for additional ski areas, particularly tributary to the southern portion of California. Mineral King development is a real step ahead in supplying this need. Plans for the development are well known and of long standing. Our prospectus was issued soliciting bids under certain conditions. To hold another public

EXHIBIT

C




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hearing at this stage would not be consistent with the long standing situation or current action in relation to the prospectus.

Under the circumstances we regret that we cannot accede to your request for a hearing. I am sorry that in this instance the Directors of the Sierra Club may be in disagreement with our program and procedure. Whether or not any development as a result of the present prospectus will occur, can't be predicted with accuracy at present.

Sincerely yours,

  
CARL A. COMBS  
Regional Forester



U.S. Forest Service Department of Agriculture		NAME OF PERMITTEE		TYPE OF USE	
 <b>SPECIAL USE PERMIT</b> Act of June 4, 1897, or February 14, 1902 This permit is revocable and nontransferable		Salt Disney Productions		Winter Sports (Survey)	
		DATE OF PERMIT		FILE CODE	
		January 10, 1956		2719	
SECTION	STATE	COUNTY	WATER DIVISION		
8	California	Sequoia	Tule River		

Permission is hereby granted to Salt Disney Productions, a corporation,  
 of 500 South Bacon Vista Street, Burbank, California  
 hereinafter called the permittee, to use subject to the conditions set out below, the following described  
 lands or improvements:

Timberland Forest land at the headquarters of the East Fork of the Tule River,  
 commonly known as the Mineral King area, in the Sequoia National Forest  
 (T. 17 S., R. 31 E., S. 14 E.)

This permit covers (as needed) acres and/or                      miles and is issued for the purpose of:

Erecting detailed surveys and plans for the development of a winter and summer  
 recreation development meeting the minimum requirements of the Mineral King  
 Prospectus of February 1955.

The exercise of any of the privileges granted hereby constitutes acceptance of all the conditions of  
 this permit.

eight hundred thirty-three and 37/100

1. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of  
 Agriculture the sum of Twenty-three thousand Dollars (\$ 23,031.37 ) for the period  
 from February 1, 1955, to December 31, 1955, and thereafter  
 annually on January 1 1956 and 1957 Dollars (\$ 23,031.37 ):

This payment is not subject to refund. However, each year \$25,000.00 of the  
 annual sum applies on a carry-forward basis as a credit for fees due in future  
 years under the conditions of the term permit if issued as specified in  
 Section 17.

EXHIBIT D

2. ~~Commencement of work~~ under this permit shall begin within 1 month, and shall be completed within 30 months, from the date of the permit. This permit shall be actually exercised at least 30 days each year, unless otherwise authorized in writing.

3. ~~Timber to be removed~~ From or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at an stumpage cost to the permittee.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge or any approved survey agent.

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privileges granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or annulment of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable. ~~It shall be the property of the United States and shall not be assigned, sold, or otherwise disposed of by the permittee. It shall be subject to revocation at any time by the United States without compensation to the permittee. It shall be subject to cancellation at any time by the United States without compensation to the permittee. It shall be subject to annulment at any time by the United States without compensation to the permittee. It shall be subject to termination at any time by the United States without compensation to the permittee. It shall be subject to abandonment at any time by the permittee without compensation to the United States. It shall be subject to revocation at any time by the United States without compensation to the permittee. It shall be subject to cancellation at any time by the United States without compensation to the permittee. It shall be subject to annulment at any time by the United States without compensation to the permittee. It shall be subject to termination at any time by the United States without compensation to the permittee. It shall be subject to abandonment at any time by the permittee without compensation to the United States.~~

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

15. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses will control.

16. This permit is accepted subject to the conditions set forth above and to conditions 17 to 19 attached hereto and made a part of this permit.

DATE

SIGNED BY FOREST OFFICER

TITLE

January 10, 1956

Forest Supervisor

GPO 500-011



17. A 30-year term special use permit covering not to exceed 80 acres, and a supplemental terminable area special use permit, will be issued to the permittee upon the completion of the following requirements:

- (a) Approval by the Regional Forester of plans which meet or exceed the minimum requirements of the Mineral King Prospectus of February 1968, which is on file in the Supervisor's Office.
- (b) Award of the first contract within three years of the date of issuance of this permit for improving, to public winter access standard, the authorized State route from the vicinity of Mammoth, California, to Mineral King, this contract to cover a significant portion of said road.
- (c) Programming of funds for completion of said road to public winter access standards within five years of the award of the first road contract.

[The term permit will not be issued unless all three of the above requirements are met.]

18. This permit will automatically terminate with the issuance of the permits described in Clause 17, and will in any event terminate three years from the date of issuance.
19. This permit shall have no force or effect until it has been signed by the permittee and the Forest Service.

WALT DISNEY PRODUCTIONS, a CORPORATION

Jan H. LL  
Date

By Ray D. Disney  
President

[Corporate Seal]

Luther R. Man  
Secretary

I, Luther R. May, certify that I am the Secretary of the Corporation that executed the above permit; that Ray P. Spence, who signed said permit on behalf of said corporation, was then President of said corporation; that I know his signature, and that his signature on said permit is genuine; and that said permit was duly signed, sealed, and attested to for and on behalf of said corporation by authority of its governing body.

[CORPORATE SEAL]

Luther R. May  
Secretary





## High Sierra wonderland

Unsurpassed in natural splendor, Mineral King is perhaps more similar to the European Alps than any other area in the United States. Altitudes range from the 7,900-foot valley to surrounding mountains that reach the 12,400-foot level. The High Sierra wonderland, located in Sequoia National Forest, is generously endowed with lakes, streams, cascades, caverns and matchless mountain vistas.

Recognizing that Mineral King's alpine character will always be its greatest asset, Disney's staff is developing a master plan for year-round recreational facilities which will actually make use of the beauty of the area. Their plan is designed to preserve the natural beauty of Mineral King and to make it accessible to more than the limited number of people who now enjoy its unparalleled qualities.

Located within a four- to five-hour drive from the Los Angeles and San Francisco metropolitan centers, Mineral King will attract an estimated 1.7 million visitors annually when it is fully developed. Of this number about 600,000 will come from out of state.

## Skier's paradise

Mineral King's high altitude gives the area one of the longest annual snow periods east of the Rockies. And many experienced skiers say its slopes rival any in the world.

Some of the longest ski runs in North America will be developed from the rim of nine outstanding bowls to Faculty Flat, gateway to Mineral King Valley. Some will be more than four and one-half miles long.

Preliminary estimates indicate that, when fully developed, the slopes will easily accommodate up to 20,000 skiers at one time.

## Preserving its beauty

Walt Disney's Mineral King plan calls for all structures to be styled along the lines of the Swiss chalet in keeping with their alpine setting. The chalet design will be somewhat influenced by contemporary American architecture.

One of the most important considerations in the unique Disney concept is the exclusion of visitor automobiles from Mineral King Valley—another

## Mineral King in the 1970's

Walt Disney Productions estimates that a capital investment exceeding \$25 million will be required to develop Mineral King in accordance with the Disney proposal. By 1975, projected as the first year of full operation, the initial phase of the project will include...



**MINERAL KING VILLAGE**, a completely self-contained complex with its own chapel, boating rink, convenience and specialty shops, conference center, theater, general store, post office and lodging accommodations for those in all income brackets.



**30 SKI LIFTS** (serving beginners, sight-seers, pleasure, and wild-life enthusiasts during warm months), placed for the greatest enjoyment, convenience and safety of beginner, intermediate, advanced and expert skiers.

approach to avoid distraction from its beauty. Visitor vehicles will be parked in a large area conveniently near the Valley entrance.

Since no visitor cars will be admitted to the Valley, widely experienced Disney engineers will design a public conveyance to speed guests from the parking area into and through Mineral King. They will create a system that will be aesthetically pleasing and in keeping with the scenery.

### Project status

On December 17, 1966, U.S. Secretary of Agriculture Orville Freeman announced that Walt Disney Productions had been selected by the United States Forest Service to develop Mineral King.

The Forest Service then granted the Disney organization a permit expiring in January, 1969, to finalize plans for the development. Also by that deadline, the first contract must be let for construction of State Route 278 from Three Rivers to Mineral King. This new all-weather road, 30 miles in length, will make possible year-round access to Mineral King.

Since obtaining the planning permit, members of the Disney staff and their consultants have conducted a wide variety of on-site surveys of snow and weather conditions, soil and terrain, to provide information needed before detail planning and construction can begin.

Disney staff members and consultants are also studying recreational areas throughout the world to collect data for use in finalizing plans for Mineral King.

When the master plan is approved and the first contract awarded on the new road, the Forest Service will issue a 50-year turn permit to Walt Disney Productions, and will have, at all times and in every way, full approval of the Mineral King development. These two organizations will work in concert to meet the public need.

Plans call for a village and initial ski facilities to open at Mineral King in the winter of 1973-1974, concurrent with the completion of the new access road.

In 1975, eight ski lifts will begin operation, taking skiers to four major bowls from the valley floor. These bowls will easily handle up to 7000 skiers at one time.

There will also be accommodations for as many as 1500 overnight guests by that year.



**MAJOR HOTELS AND LODGES** - offering luxury and median-price category accommodations - oriented to views of mountain gaps, river gorges, ski slopes and sports activities;



**TEN RESTAURANTS** located throughout the area for year-round use;



**SNOW PLAY AREA**, conveniently located near the Village and away from ski areas, where several hundred people may engage in their favorite snow activities - tobogganing, sled rides and fun with specially designed equipment;



**AND**, along with auxiliary services, a conveniently located ski school facility with ski and locker rentals, first-aid station, hospital and Forest Service office.

*Mineral King Village  
will feature  
chalet architecture*

*Walt Disney's Master Plan  
for Mineral King Wonderland*



## Walt Disney's hope for Mineral King

"We believe that Mineral King should be much more than the best place to spend a vacation or holiday. We want it to be an experience with the outdoors for those who love nature — or who want to learn to love it.

"It is our plan to make Mineral King a year-round outdoor recreational adventure for everyone... a challenge to the accomplished skier and a good place to put skis on for the first time... the ideal spot for an old-fashioned family outing... home base for wild-life studies, hikers, fishermen and campers... the perfect retreat for those who just want to get away for a breath of fresh, invigorating mountain air.

"Stated simply, we are planning Mineral King with you in mind. Whatever your interests, athletic abilities or income level, we want Mineral King to be your choice for outdoor, year-round recreational activities.

"Our plan for the area is being guided by one other very important consideration: Mineral King's great natural beauty must be preserved at all costs.

"When I first saw Mineral King, I thought it was one of the most beautiful places in the world, and we will keep it that way. With its development, we will prove once again that man and nature can work together to the benefit of both."

### A promise from Walt Disney

*"When we go into a new project, we believe in it all the way. That's the way we feel about Mineral King. We have every faith that our plan will provide recreational opportunities for everyone."*

*"All of us promise that our efforts now and in the future will be dedicated to making Mineral King grow to meet the ever-increasing public need. I guess you might say that it won't ever be finished."*



State of California

Transportation Agency

**Memorandum**

To : Mr. Gordon C. Luce, Chairman  
and Members of the  
California Highway Commission

Date: September 8, 1967  
Re: 06-Tal-276 0.0/20.4

From : Department of Public Works—Division of Highways

Subject: Resolution of Intention

Submitted for your consideration is a map showing the recommended location of State Highway Route 276 in Tulare County between 0.6 mile east of Salt Creek near Route 198 and Mineral King.

This recommended location is to be developed as an access-controlled facility. It is approximately 20.4 miles in length and is estimated to cost \$22,400,000, including \$22,000,000 for construction and \$400,000 for rights of way. These estimates are based on construction of a basic two-lane 22-foot roadbed with safety lanes for passing where feasible.

**ALTERNATE ROUTES**

As discussed in the attached Report of Route Studies, a single studied location in the canyon of the east fork of the Kaweah River appeared to offer the most feasible plan for development of an all-weather highway to Mineral King. The highway will provide access to the proposed \$35 million recreational complex at Mineral King being planned by Walt Disney Productions under a permit from the U. S. Forest Service.

The project is located primarily through U. S. Government lands. The central portion crosses a six-mile width of Sequoia National Park. To the east of Sequoia National Park, the highway is almost entirely within federally owned National Forest lands. To the west, federal lands under the jurisdiction of the Bureau of Land Management are primarily involved with privately owned property representing about 25 to 30 percent of the total.

**SUMMARY OF REACTIONS**

Endorsements for or opposition to the project have been received from a very wide range of public agencies and officials, civic and group organizations, and individuals.

EX-100-11 **E**

Mr. Gordon C. Luce and  
Members of the Commission

-2-

September 8, 1967  
06-Tul-276

Governmental agencies supporting the project include the Tulare County Board of Supervisors, the Porterville City Council, and the U.S. Forest Service.

The project has been endorsed by a number of legislators including U. S. Senators Thomas Ruchel and George Murphy, Congressman Robert Mathias, State Senators Hugh Burns and Howard Way, and Assemblyman Gordon Duffy. Mayor Sam Yorty of Los Angeles has also expressed support of the project.

Organizations supporting the project include the State Chamber of Commerce, the Porterville Chamber of Commerce, the Tulare County Highway Committee, the Far West Ski Association, the California Wildlife Federation, the Advisory Committee to the U. S. Forestry Service, the Sierra Land Use Committee, and Walt Disney Productions.

Those opposing the project include Assemblyman Alan Sieroty, the Kern-Kaweah Chapter of the Sierra Club, and the Mineral King District Association.

At the public hearing held on August 10, 1967, 12 individuals spoke or wrote letters for the record opposing construction of the route, and four went on record favoring the project.

Throughout the entire route study stage since initiation in April 1966, the project has generated a high degree of public interest. The Division, the Department, and the Commission have received many letters from individuals and organizations expressing both support and opposition to the Route 276 project.

Just prior to the public hearing in a letter dated August 2, 1967, Mr. Robert B. Moore, Acting Regional Director of the National Park Service, advised that the Secretary of the Interior has not decided to permit access to the Mineral King area across Sequoia National Park lands. He further stated that the National Park Service would be without authority to participate in a public hearing.

On the day of the August 10, 1967, public hearing, a telegram was received from Assistant Secretary of the Interior Stanley A. Cain advising that no easement exists for the planned new highway through Sequoia National Park to service development at Mineral King and the decision on this question has not been made.

Mr. Gordon C. Luce and  
Members of the Commission

-3-

September 8, 1967  
06-Tul-276

#### RECOMMENDATION

On the basis of the engineering studies, the conferences with local, State and federal authorities, and the results of the public hearing held in connection with the project, the single studied location as shown on the attached map is recommended for route adoption consideration.

Although the Department of the Interior has not given approval to cross Sequoia National Park lands, the recommended corridor across park lands is considered the only feasible location for development of the route as authorized by the Legislature. With adoption of the route, the State will have a firm proposal to present to the Department of the Interior for consideration.

The proposed alignment is compatible with the terrain with every attempt being made to avoid disruption of the area. It also meets the requirements of the U.S. Forest Service for development of the Mineral King recreational complex.

The project has received wide public support, including that of Governor Ronald Reagan, former Governor Edmund G. Brown, U. S. Senators Thomas Kuchel and George Murphy, Secretary of Agriculture Orville Freeman, and the Tulare County Board of Supervisors. Although opposed by conservationists, the highway will permit access to and recreational development of the Mineral King area, benefiting both the economy of Tulare County and the recreational demands of California's ever-expanding population.

It is therefore recommended that the Commission take appropriate action to authorize the State Highway Engineer to proceed in accordance with current procedural policy to notify the Tulare County Board of Supervisors and the local press of the Commission's intention to consider the adoption of a route and its designation as a freeway.



J. A. LEGARRA  
State Highway Engineer

Attach.

REPORT  
OF  
ROUTE STUDIES  
RELATIVE TO  
THE FREEWAY LOCATION  
OF  
ROUTE 276  
IN TULARE COUNTY  
BETWEEN  
0.6 MILE EAST OF SALT CREEK  
NEAR ROUTE 198  
AND  
MINERAL KING

06-TUL-276 0.0/20.4

SEPTEMBER 1967

-1-

06-Tul-276 0.0/20.4

PROPOSAL

It is proposed to establish the location as an access-controlled facility of the portion of State Highway Route 276 in Tulare County between 0.6 mile east of Salt Creek near Route 198 and Mineral King, a distance of approximately 20.4 miles.

The route is to be developed as an all-weather highway to provide access to the proposed \$35 million recreational complex at Mineral King being planned by Walt Disney Productions under permit from the U. S. Forest Service.

BACKGROUND INFORMATION

Route 276 was added to the State Highway System by action of the 1965 Legislature.

At the April 21, 1966, Commission meeting, the Division presented a brief status report covering planning considerations involved in development of the route. This report advised that the Governor's office had on April 4, 1966, submitted an application for a Federal Economic Development Administration grant for the planning and design phase of route development. (The application was subsequently revised to a request for a construction grant.)

Following discussion of the project at the April 21, 1966, meeting, the Commission adopted a motion directing the Division to immediately initiate routing studies so that the location, type of facility, and estimated costs for development of Route 276 could be determined at an early date. These studies are now completed and a public hearing has been held. Since development of the route will require traversing portions of Sequoia National Park and Sequoia National Forest, the studies have been closely coordinated with park and forest officials.

In the 1966 First Extraordinary Session, Senate Concurrent Resolution No. 19 was passed on May 16, 1966, which requested the Highway Commission and the Division of Highways to undertake all steps necessary to bring about prompt selection, adoption, and determination of the location of Route 276.

On December 14, 1966, the California Transportation Agency accepted a \$3 million federal construction grant from the Economic Development Administration to help defray the costs of the Mineral King highway project. The Economic Development Administration grant required the entire project to be under contract within 24 months and also required that

-2-

06-Tul-276 0.0/20.4

the Federal Government must be furnished evidence by March 31, 1967, that the State has available sufficient funds to complete the project. Subsequently, the Economic Development Administration has agreed to amendments to the Offer of Grant providing for the project to be constructed in units and to be financed over a longer period of time.

At its meeting on April 20, 1967, the Highway Commission passed a resolution allocating \$800,000 for expenditures for acquisition of rights of way on Route 276 during the 1967-68 fiscal year. In this resolution, the Commission also declared its intent to budget, as necessary, all funds needed to permit award of all construction contracts over a subsequent period of four years for the Mineral King project in accordance with the Economic Development Administration Offer of Grant as revised.

Also at its April 20, 1967, meeting, the Highway Commission adopted a separate motion requesting the Legislature to give consideration to a toll road as a means of helping to finance the project.

On June 15, 1967, House Resolution No. 250 by Assemblyman Duffy was adopted by the Assembly requiring the Department of Public Works to report its findings and recommendations relative to the feasibility of various methods of defraying the cost of the Route 276 highway to Mineral King to the Assembly on or before the fifth legislative day of the 1968 Regular Session. As part of the study, the Department is to ascertain if toll financing would conflict with the requirements of the Economic Development Act.

Because of the complex financial considerations involved in possible use charges involving the selling of revenue bonds, it was felt that an outside consultant should be retained to assist in the preparation of these aspects. The Division is negotiating with the firm of Coverdale and Colpitts to undertake these studies, which are expected to require 90 to 120 days to accomplish.

#### PRINCIPAL CITIES OR COMMUNITIES

The subject project begins on Route 198 about 32 miles east of Visalia near the unincorporated community of Three Rivers, which has a population of approximately 1,000. The route terminates at Mineral King, where there are a number of summer homes, a pack station, a store, and a ranger station.

#### ROUTE PLANNING

The legislative description of Route 276 is from "Route 198 near Three Rivers to Mineral King."



-3-

06-Tul-276 0.0/20.4

Route 276 is not included in either the California Freeway and Expressway System or the State Scenic Highway System. The route is not presently included in any Federal-aid system of highways.

The beginning of the project at this time is about 0.6 mile east of Route 198 so as not to prejudice the selection of a routing for future relocation of Route 198 in the Three Rivers area for which studies are now under way. The connection between Routes 276 and 198 will be included in the Route 198 study, which is expected to be completed in early 1968.

#### EXISTING COUNTY ROAD

Tulare County maintains a very narrow and substandard road between Three Rivers and Mineral King. Its length is approximately 25 miles, consisting of extremely substandard alignment and grades. There are a number of switchbacks with radii of less than 50 feet. Most of the surface is oiled dirt with several short sections consisting of only a graded roadbed.

The road traverses from Elevation 1,160 at the junction of Route 198 to an elevation of 7,830 at Mineral King. Heavy snow generally exists during the winter southeast of Lookout Point (about 10 miles east of Three Rivers), and presently the road is closed beyond this point during the winter months.

The local name of the existing county road is "Mineral King Road." It was reviewed in the field and found not to qualify for acceptance for State maintenance.

#### TRAFFIC

The Tulare County Road Commissioner's office estimates current average daily traffic on the county road to be 95 vehicles. Counts made over the 1966 Memorial Day weekend indicated a total of 1,483 vehicles between midnight Thursday and midnight Monday. The highest single day was Sunday, which registered 488 vehicles. The highest hourly volume during the weekend was 107 vehicles, with several hours in the range of 50 vehicles.

On the basis of the recreational development proposed by the Disney firm, it is estimated that by 1978, upon completion of the first phase of development, the average daily traffic volume would be 4,550 vehicles. During the peak months (summer) the average daily traffic would increase to 9,850 vehicles. By 1990, the average daily traffic is estimated to increase to 6,900 vehicles.

-4-

06-Jul-276 0.0/20.4

TYPICAL SECTION

Cost estimates are based on development of a basic two-lane 28-foot roadbed section with safety lanes for passing at frequent intervals.

Since the early stages of planning of the route, it has been evident that a wide variation of driving speeds will prevail. This, combined with the limited opportunities for passing maneuvers on the 28-foot roadbed and the long sustained grades, creates an urgent need for safety lanes to allow passing at intervals along the route. These lanes will also be used for installing and removing tire chains, depending upon the snow line.

Experience has shown that these safety lanes should be approximately one-half mile in length. We also believe they should be spaced so that vehicles would have to tolerate no more than five minutes in a queue without a passing opportunity. The exact positioning of these lanes would be determined during further study during detail design of the project.

The proposed 28-foot, two-lane road, under the planned conditions of grade and sight distance restrictions, will have a capacity of at least 1,200 vehicles per hour in one direction. This is considered adequate to safely handle the projected traffic to be generated by the Disney-Mineral King recreational development.

ALTERNATE ROUTES

Studies relative to this project were initiated following the California Highway Commission's request of April 21, 1966, for immediate commencement of studies to determine the routing and standards for an all-season highway.

Several corridors were initially considered but based on reconnaissance studies, it was concluded that feasible development of an all-weather highway to Mineral King is possible only in the corridor of the east fork of the Kaweah River. The existing county road to Mineral King generally parallels this water course; however, very little of the existing roadbed can be incorporated into the proposed all-weather highway.

Within this corridor, two alignments for the westerly portion of the project were studied in detail. Both were based on a minimum curve radius of 850 feet, but one alignment utilized a maximum grade of 6 percent while the other used a maximum grade of 8 percent below the 5,000-foot elevation and 6 percent above the 5,000-foot elevation. This latter alignment is 2.3 miles shorter, and its construction cost is estimated to be \$3.5 million lower.

-5-

06-Jul-276 0.0/20.4

After considering the economic and engineering factors and with the concurrence of other governmental agencies involved, the alignment utilizing the eight percent maximum grade below 5,000 feet was presented at the public hearing as a single proposal representing the most feasible plan of development. The proposed routing is shown on the attached map, Exhibit A. The horizontal alignment in combination with the grades proposed and traffic volumes anticipated, should provide safe operating speeds in the range of 35 to 50 miles per hour.

The project is 20.4 miles in length and is estimated to cost \$22,400,000, including \$22,000,000 for construction and \$400,000 for rights of way. The project terminates at the location of the proposed parking area to serve the Disney recreational development. This parking area is just outside the Mineral King basin in an area called Faculty Flat. The Disney plan is to provide some kind of mass transportation between the parking area and the Mineral King recreational facilities.

The route is located primarily through U. S. Government lands. The central portion crosses a six-mile width of Sequoia National Park. To the east of the national park, the project is almost entirely within federally owned National Forest lands. To the west, federal lands under the jurisdiction of the Bureau of Land Management are primarily involved with privately owned property representing about 25 to 30 percent of the total.

In order to insure that the planned capacity of the roadway may be maintained and to assist in corridor control to preserve scenic aspects, it is proposed to acquire access rights through private properties. To accomplish this, it will be necessary for the Highway Commission to adopt the route as a freeway.

During the course of our studies, considerable attention was given to the problem of preservation of Giant Sequoia trees. By field surveys, we have located and determined the size of every sequoia tree in the general vicinity of the projected line. In addition, the Division has secured the services of Dr. Richard Hartesveldt, a recognized authority on ecology, particularly pertaining to sequoia groves. Dr. Hartesveldt studied in the field the relationship of the projected line to the sequoias.

It is the Division's intention to heed Dr. Hartesveldt's warnings involving encroachment within the root areas of the sequoia specimens and the avoidance of erosive concentration of runoff in the natural drainages. Five structures are proposed specifically to reduce impact upon the groves. To our present knowledge, no significant sequoia need be destroyed to allow passage of the projected route.

-6-

06-Jul-276 0.0/20.4

Another matter relating to ecology which will receive special attention will be provision of safe crossing for wildlife, particularly deer. Special studies of this problem are now under way for a similar highway in Northern California. We are hopeful that methods can be developed to encourage use by deer of safe crossing points to minimize hazard to both animals and the traveling public.

#### COORDINATED TRANSPORTATION PLANNING

##### A. Master Plans

The current Area General Plan for Tulare County was adopted prior to the issuance of the Mineral King development prospectus by the Forest Service and contains no reference to a new or high standard route to Mineral King.

##### B. City Street and County Road Traffic

The proposed route crosses the existing county road at a number of locations. Where the county road serves property or recreation facilities, connections may be provided. Much of the existing road probably can be abandoned following completion of the new route.

##### C. Total Projected Regional Transportation Requirements

EDA  
line  
This project is a major element in the development of the Mineral King recreational complex. Because of the impact of the Mineral King development, this route and the related future Route 198 freeway will be the backbone of the transportation network in eastern Tulare County.

#### COMMUNITY FACILITIES AND RESOURCES

##### A. Schools

No schools exist within the limits of the proposed route. The area is sparsely populated at present with very few residents.

##### B. Public Recreational Resources

As previously mentioned, the project will provide access to the proposed recreational complex planned for development at Mineral King by Walt Disney Productions under permit from the U. S. Forest Service. The route also crosses a six-mile width of Sequoia National Park, thus affording greater public access

-7-

06-Jul-276 0.0/20.4

to the southern part of the park which contains the Atwell and East Fork Groves of Giant Sequoia redwoods. The Mineral King and Sequoia National Park aspects are discussed separately below.

#### 1. Mineral King Recreational Development

In February 1965, the U. S. Forest Service issued a "Prospectus for a Proposed Recreational Development at Mineral King in Sequoia National Forest." The purpose of this prospectus was to solicit proposals from private investors for development of an extensive winter and summer recreational complex at Mineral King.

In January 1966, the Forest Service awarded a preliminary three-year permit to Walt Disney Productions to undertake planning for the recreational development of the Mineral King area. Under the terms of the permit, improvement of the 25-mile access road from Route 198 near Hammond to such a standard that winter visitors can drive their own cars to Mineral King must also be programmed during the same period.

A 30-year term permit will follow the preliminary permit when (1) recreational development programs and plans submitted are approved by the Forest Service, (2) the first contract is let for a significant portion of the road, and (3) funds are programmed for completion of the road improvement project within five years. If any one of these requirements is not met, the preliminary permit will expire three years from the date of issue, and no term permit will be granted by the Forest Service.

The Walt Disney proposal envisions an investment of about \$35 million by 1976 to develop Mineral King facilities in accordance with its master plan. This plan anticipates two million visitors annually with accommodations for 3,000 overnight visitors in permanent facilities and 2,000 more in seasonal facilities. Plans include provision for as many as 20 ski lifts to at least four major bowls.

-8-

06-Tul-276 0.0/20.4

## 2. Sequoia National Park

The central 9.2 miles of the proposed routing is within Sequoia National Park. The location studies through the park were closely coordinated with park officials through correspondence and numerous meetings and conferences.

It had been assumed that the Forest Service invitation for the Mineral King recreational development proposals were made with the understanding that development of an improved access road across the park was satisfactory to the National Park Service. In his letter of April 18, 1967, to Chairman of the Highway Commission Gordon C. Luce, Secretary of Agriculture Orville Freeman restated this position and further emphasized that his department was convinced that such a road could be built without jeopardizing the important National Park values involved. A copy of Secretary Freeman's letter is included in the record of the public hearing furnished to the members of the Commission.

Regardless of any prior understanding between the Departments of Agriculture and the Interior, Secretary of the Interior Stewart Udall has not yet agreed to permit construction of Route 276 across Sequoia Park lands. Statements to this effect were contained in (1) a letter dated August 2, 1967, from Mr. Robert B. Moore, Acting Regional Director of the National Park Service, and (2) in a telegram dated August 10, 1967, from Assistant Secretary of the Interior Stanley A. Cain. (Copies of this letter and telegram are included in the record of public hearing.)

Although park officials appear to be in agreement with the proposed route location if access across the park is permitted, Mr. Moore in his August 2 letter objected to the inclusion of safety passing lanes as an indication that the State does not intend to build only a two-lane highway. Mr. Moore stated that the proposal for passing lanes would not be acceptable even if the Secretary of the Interior should approve access.

In response to a request from the Park Service, the Division looked into possible means of highway development to Mineral King which would avoid



-9-

06-Tul-276 0.0/20.4

a surface routing across the park. In this regard, there appear to be only two possibilities: (1) a north/south routing from State Highway Route 190 via Farewell Gap Summit and (2) a tunnel under the park surface in the corridor of the East Fork of the Kaweah River.

A route from Mineral King via Farewell Gap would continue south along the Little Kern River watershed to a junction with State Route 190 at Quaking Aspen. For traffic originating south of Porterville, this routing results in about five miles of additional travel distance as compared to a routing via the East Fork of the Kaweah River. For traffic originating from north of Route 190 near Visalia, the additional travel distance is about 45 miles.

The Farewell Gap routing between Quaking Aspen and Mineral King is about 28 miles long and is estimated to cost about \$76 million, including a 5.3-mile long tunnel. Snow removal costs associated with this routing would be higher than those for a location in the East Fork of the Kaweah River corridor since a longer length of the route is above the snow line.

As an alternative to a surface road across the park in the East Fork corridor, the Division investigated a tunnel beginning at a point near the westerly park boundary and ending at the easterly park boundary near Cabin Cove. This tunnel would run generally easterly on tangent alignment with an uphill grade of about 5.8 percent. It is estimated that such a tunnel would increase the estimated construction cost by approximately \$57 million over that of a surface route.

Because of the excessive construction costs and the problems of operation and maintenance on the possible alternatives utilizing long tunnels, it was concluded that the only feasible plan of development for a suitable access road to Mineral King is a surface highway along the general corridor of the East Fork of the Kaweah River. Our investigations indicate there are no practical alternatives worthy of further consideration.

-10-

06-Tul-276 0.0/20.4

The Park Service also asked if other forms of transportation had been investigated. The Division replied that it had statute authority only in the field of highway development and could not legally expend funds for studies of other forms of transportation to Mineral King. It is understood, however, that both the U. S. Forest Service and the Disney organization have looked into other possible transportation means but have concluded that a modern, all-weather highway is the only practical means of providing access.

Because of concern expressed by the Park Service with regard to impact of the proposed highway upon ecology, the Division, as previously noted, retained the services of Dr. Richard J. Hartesveldt, Associate Professor of Biological Sciences at San Jose State College, to make such a study. Dr. Hartesveldt had been recommended by the National Park Service and has made other ecological studies for the Park Service in the Sequoia and Kings Canyon National Parks redwood groves.

On November 21, 1966, a hearing was held in Fresno by the National Park Service to receive comments with regard to wilderness proposals for Sequoia National Park. The National Park Service proposal for the creation of a Sierra Crest Wilderness and a Hockett Wilderness specifically provides for a corridor between the units about two miles wide along the east fork of the Kaweah River to accommodate improved public access to Mineral King.

C. Historical Areas

There are no known historical sites or areas affected by the proposed routing.

D. Aesthetic Values

Although not presently included in the State Scenic Highway System, the project traverses superb scenery in the canyon of the east fork of the Kaweah River, and the completed highway undoubtedly will provide one of the most scenic drives in the State.

-11-

06-Tul-276 0.0/20.4

A joint aesthetic review of the project in the field has been made by representatives of the National Park Service, the U. S. Forest Service, and the Division of Highways.

Final design of the project will be closely coordinated with park and forest officials to insure maximum protection and enhancement of scenic values.

#### **E. Property Values and Property Tax Impact**

Since all but a small portion of the project passes through federal lands, there will be no significant reduction in tax base of Tulare County by reason of right of way acquisition.

*EDA  
basis*

Because the highway project will make access possible for the Disney Mineral King recreational development, Tulare County should experience a dramatic economic benefit. Based on the economic study prepared by Walt Disney Productions, the proposed Mineral King recreational area is estimated to generate a total of primary and secondary new initial investment of some \$57 million within a 10-year period and to result in annual payrolls of at least \$13 million thereafter. It will ultimately generate 2,500 new permanent jobs, primarily in the trade and service industries. An immediate result during the construction phase would be the creation of over 500 jobs in construction and supporting services. By 1976, upon completion of the first development phase, it is estimated that Tulare County will be receiving an additional \$1,700,000 annually in tax revenues.

#### **F. Impact on Agriculture**

The only agricultural lands traversed by the route are occasional marginal grazing lands.

#### **G. Federal, State, and Local Public Facilities**

No significant public facilities are involved.

### **ACTION TAKEN SUBSEQUENT TO INITIATION OF STUDIES**

#### **1. Conferences and/or Meetings**

Numerous meetings and conferences were held with local staffs of Tulare County, Bureau of Land Management, Sequoia National Park, and Sequoia National Forest to maintain close coordination during the project studies.

-12-

06-Tul-276 0.0/20.4

During the early period of our studies, the Division constructed a seven-foot long, three-dimensional model of the route corridor. This model has been used on many occasions in connection with meetings, conferences, and displays.

**B. Notification of Local Authorities of Provisions of Section 75.5 of the Streets and Highways Code**

On May 2, 1966, the Tulare County Board of Supervisors was notified by letter of the provisions of Section 75.5 of the Streets and Highways Code.

No information with respect to this section of the Code was offered for presentation at the public hearing.

**C. Notification of State, Federal, and Local Agencies**

Letters of notification of the project studies were sent to State, Federal, and local agencies listed on the attached Exhibit B.

The Division of Forestry by letter dated July 12, 1966, noted that its Hammond Forest Fire Station would be affected by the highway routing as proposed. In this regard, a change in the proposed routing has been made to eliminate this conflict.

The Regional Water Quality Control Board, Central Valley Region, by letter dated November 7, 1965, requested that they be notified in the event it is necessary to create crossings of the East Fork Kaweah River so pollution prevention measures could be mutually discussed.

By letter dated August 2, 1967, the Department of Fish and Game requested that every effort be made to minimize the loss of wildlife through the use of protective devices such as warning signs, reflectors, fences, and wildlife crossings. They also suggested consideration of establishing access points or parking areas for hunters on public lands along the route up to the park line. They also requested consideration of the protection of water quality in the East Fork Kaweah River.

None of the other replies from the various agencies indicated any conflict in planning.

-13-

06-Tul-276 0.0/20.4

**D. Public Hearing**

A well-publicized public hearing was held in the Three Rivers Memorial Building in Three Rivers on August 10, 1967. Approximately 210 people attended the hearing, including Assemblyman Alan Sieroty, Mr. Joseph E. Doctor representing State Senator Howard Way, Mr. Frank S. Reiche representing State Assemblyman Gordon Duffy, members of the Tulare County Board of Supervisors, the Tulare County Planning Director, members of the Tulare County Road Department, the Superintendent of the Sequoia National Park, the Supervisor of the Sequoia National Forest, and representatives of the U. S. Forest Service, California Department of Fish and Game, Southwest Regional Federal Water Pollution Control Administration, Bureau of Land Management, and the Kern County Board of Supervisors.

The District Engineer, District 06, presided at this hearing at which the single studied proposal was presented.

Government agencies supporting the project included the Tulare County Board of Supervisors, Porterville City Council, and the U. S. Forest Service.

The Kern County Board of Supervisors urged that the highway be constructed "without prejudice to the allocation of State highway funds for other highway projects."

The project was endorsed by a number of legislators including Congressman Robert Mathias and State Senators Hugh Burns and Howard Way.

State Assemblyman Alan Sieroty opposed the project.

Organizations supporting the project include the State Chamber of Commerce, the Porterville Chamber of Commerce, the Tulare County Highway Committee, the Advisory Committee to the U. S. Forest Service, the Far West Ski Association, and the California Wildlife Federation.

// The Kern-Kaweah Chapter of the Sierra Club opposed the project.

A representative of Walt Disney Productions supported the project and outlined the history of the proposed Mineral King recreational development.

-14-

06-Tul-276 0.0/20.4

Of those individuals expressing a preference, four opposed the proposed project, and one supported it as presented.

Copies of the transcript of proceedings and the report of public hearing were forwarded for the attention of the members of the Highway Commission under date of September 7, 1967.

**E. Correspondence and Statements Received Prior to and Subsequent to the Public Hearing**

In April 1967 at the time the Commission was considering whether to proceed with financing, telegrams were received from the following legislators or officials supporting the proposed project: U. S. Senators George Murphy and Thomas Michel, Congressman Robert Mathias, State Senator Hugh Burns, Assemblyman Gordon Duffy, and Mayor of Los Angeles Sam Yorty.

In a letter dated August 10, 1967, the Cutter-Orosi Chamber of Commerce felt that the cost of the Mineral King highway should be paid for by those who use it.

Letters for the record of hearing were received from eight individuals opposing the project and three individuals favoring the project.

The Mineral King District Association, in a statement dated August 17, 1967, felt the proposed route should not be built.

Several letters were received subsequent to the hearing from property owners and the Silver City Service Club on behalf of Silver City property owners requesting that the proposed alignment be revised to miss all cabins in the Silver City area if at all feasible from an engineering standpoint.

Copies of all the afore-mentioned correspondence are included in the record of the public hearing.

In addition to those submitted for the hearing record, many letters have been received since the initiation of studies in April 1966 expressing both support of and opposition to development of Route 276.



-15-

06-Jul-276 0.0/20.4

**F. Studies Subsequent to the Public Hearing**

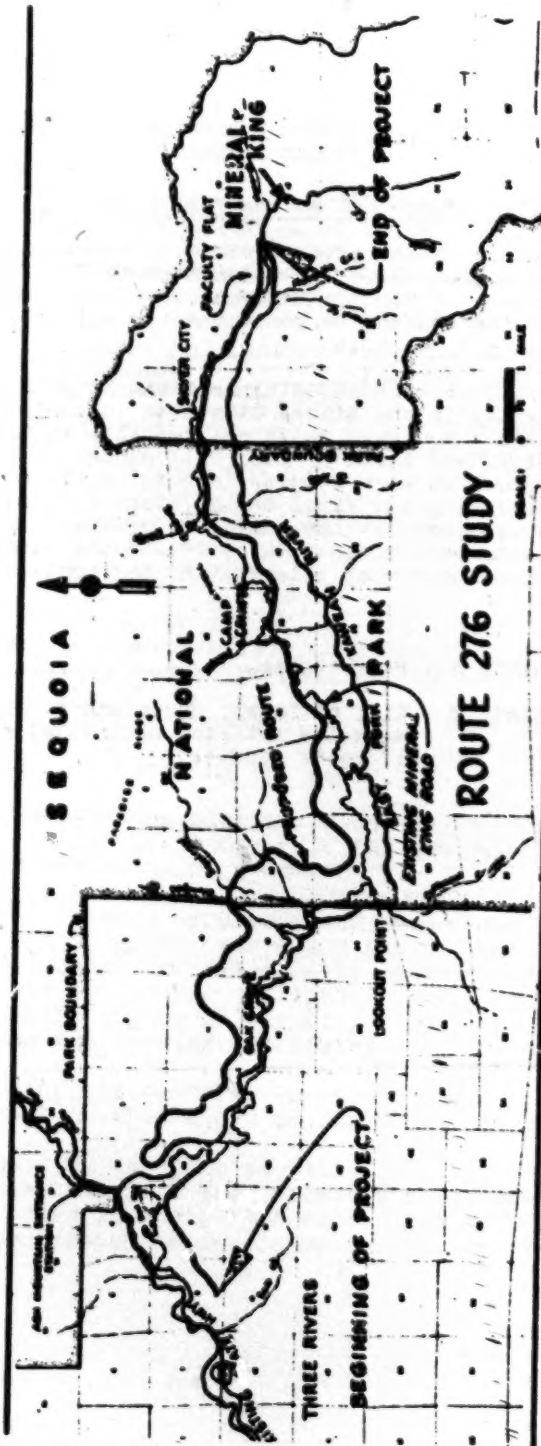
As noted above, private property owners in the vicinity of Silver City (just easterly of the east boundary of Sequoia National Park) have requested that the routing be positioned to miss all cabins if at all feasible.

It appears that the alignment can be shifted slightly in the Silver City area to avoid several cabins. However, it is not possible to miss all cabins, and three or four will probably be required. Further studies in this regard will be made during the final design stage to minimize as much as possible the taking of cabins. Any shift in alignment would be of a relatively minor nature within the normal tolerance of the route adoption.

**ATTACHMENTS**

**Exhibit A - Project Map.**

**Exhibit B - List of Local, State and Federal Agencies notified of initiation of route studies.**



6TH: 20.4 MILES ↔ ESTIMATED CONSTRUCTION COST: \$22,000,000 ↔ ESTIMATED RIGHT-OF-WAY COST: \$400,000

August 1967

EXHIBIT G

# DEPARTMENT of the INTERIOR

news release

**OFFICE OF THE SECRETARY**

**For Release April 26, 1969**

## **WILDERNESS PLANNING**

Secretary of the Interior Walter J. Hickel said today that he has asked the National Park Service to revise its master planning procedures to provide for broader public review and comment.

Hickel noted that the Wilderness Act of 1964 already provides for advance public review and comment on proposals for Wilderness designation.

"This seems to me to be an eminently sensible procedure. While most Master Plans are more complex than wilderness values are involved, I believe that public participation in the planning process should be encouraged for all areas of the National Park System," Hickel said. "Public meetings will afford interested citizens a superior opportunity to make known their views on all proposals affecting a park area. Such meetings will, however, be more informal than present wilderness hearings which require formal notice and recorded transcripts."

A Park area Master Plan, he pointed out, affects all management plans, including location of visitor centers, concessioner accommodations for lodging and eating, administrative structures and facilities, as well as the location and design of roads.

In preparing such plans, the Secretary added, National Park Service specialists trained in several disciplines take into account such factors as ecology; natural, scientific and historic features of the area to be protected; effects upon fish and wildlife, and protection of water resources from pollution.

In light of the proposed new procedures broadening public participation in the Master Plan policy, Hickel said he was revoking a policy statement on construction of major park roads adopted by the previous administration on January 18, 1969, and published in the Federal Register on January 29, 1969.

That policy would only have required public hearings on the location and engineering design of any proposed new major National Park System road.

"Since the location and design of park roads is only one of several important factors in the planning process," Hickel said, "it is not logical to single out the road construction aspect of planning for public discussion. All phases should be subject to comment from the public."

FROM MICHAEL ECKHART  
GOVERNMENT RELATIONS DIRECTOR  
NATIONAL PARK SERVICE  
2000 MOUNTAIN VIEW  
SAN FRANCISCO, CA 94114  
202-451-1234

\*\*\*\*\*

APR 26/69

10138-69

EXHIBIT 4

DEPARTMENT OF FISH AND GAME  
 1200 MARKET STREET  
 SACRAMENTO, CALIFORNIA 95834

STANDARD BUSINESS LETTER

November 27, 1968

Mr. N. E. Jones  
 1714 J. Beverly Glen Boulevard  
 Los Angeles, California 90024

Dear Mr. Jones:

This is in reply to your letter of November 17, 1968 which inquires about flow and water quality of the Hart Peak of the Klamath River in the Mineral King area.

We refer to a report for the Three Rivers Soil Conservation District (1963) which quotes this Department as stating "in a normal year the flow of all the flows (of the Klamath River) are below the desirable minimum discharge". We apparently do not have a copy of this report, but can confirm that the statement attributed to us is true. The waters of the Klamath River are diverted and re-diverted through a series of hydroelectric power facilities resulting in very low flows on most of the river until the water passes through Powerhouse No. 2 which is the most downstream of the S.C.D. facilities. Below Powerhouse No. 2 the water is allowed to flow in the river channel.

We have initiated studies of the Edison Company's Klamath development in connection with the Federal Power Commission relicensing of the project. The current license expires on August 7, 1974. Our studies are aimed at developing recommendations for the improvement of fish and wildlife conditions in the project area. These recommendations will be submitted to the FPC and hopefully will be made terms of the new license which will be issued.

The National Park Service has issued a special use permit to the Edison Company for the development within Sequoia-Kings Canyon National Park. The permit stipulates that certain releases shall be made below the diversions on the Minner and Minner Parks. Our current study relative to FPC Project No. 275 may show that different flows are desirable, and we will recommend higher flows to the FPC if this appears desirable.

Your second question asks for a description of any reports on the water quality and quantity for fish and wildlife in the Hart Peak of the Klamath. We have made no new reports to date nor do we know of any. We have, however, worked with the Edison Company on treatment techniques for control of algae.

ENCLOSURE *L*

Dr. R. L. Jones

We also noted whether or not there have been studies of the effect of reductions in the water quality and quantity caused by the development of the Mineral King area. We have not yet studied this matter, but expect to do so in the near future.

We understand the Federal Water Pollution Control Administration and the U. S. Geological Survey are currently engaged in studying stream in the Mineral King area to determine their water quality characteristics prior to any development. We understand a report on this study will be published next month. You should be able to obtain a copy by writing to the Federal Water Pollution Control Administration, 400 Central Avenue, Alaska 99501.

Our State Water Resources Control Board has set tentative standards for water discharges in the Mineral King area that probably will be adopted shortly.

Our fourth question regards the potential effect of development in the Mineral King Game Refuge on game. This Department has not made specific studies nor prepared reports regarding the effects of this development on wildlife. We can say, however, that in an extensive development such as the Disney proposal, considerable wildlife habitat would be lost and wildlife would suffer from human encroachment. In addition, the deer hunting that the U. S. Forest Service now permits in its game refuge would undoubtedly have to be curtailed because of the influx of people to the Disney development.

I hope we have provided you with the information you desire.

If you require additional detailed information regarding our interests in the Mineral King area, I suggest you contact Mr. Chet Hart, our Regional Manager for Region 4. His address is:


Mr. Chet Hart  
Department of Fish and Game  
Region 4  
1834 East Shaw Avenue  
Fresno, California 93701

Sincerely,

*J. C. Frazer*  
JCS

J. C. Frazer, Chief  
Water Projects Branch

**Area Permit - (Supplemental to Term Permit)**

U.S. Department of Agriculture Forest Service		NAME OF PERMITTEE		NAME OF USE	
	<b>SAMPLE</b>		DATE OF PERMIT		STATE
	<b>SPECIAL USE PERMIT</b>				
Act of June 4, 1937, 50 Stat. 1065					
This permit is revocable and nontransferable.					
CLASS	STATE	COUNTY	WATER COURSE		
8	California	Sequoia	Tule River		

Permission is hereby granted to \_\_\_\_\_ (Permittee's name)

of \_\_\_\_\_  
 hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

National Forest land in portions of sections 18, 26, 27, 28, and 34, Mount Diablo Meridian, Sequoia National Forest, shown on the map attached to the Term Permit of \_\_\_\_\_ (date) issued to the above permittee, as needed for the use of the facilities and improvements specified in Clause 25 of the term permit.

This permit covers \_\_\_\_\_ acres and/or \_\_\_\_\_ miles and is issued for the purpose of:

Developing and maintaining ski slopes, trails, parking areas, refuse and sewage disposal areas, roads, etc. in conjunction with the facilities and improvements specified in Clause 25 of the foregoing Term Permit.

The exercise of any of the privileges granted hereby constitutes acceptance of all the conditions of this permit.

1. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the period from \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ 19\_\_\_\_, and thereafter annually on \_\_\_\_\_ (see Clause 19 of Term Special Use Permit) Dollars (\$ \_\_\_\_\_);

~~RECEIVED BY THE FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, FOR THE PERMITTEE'S USE, AND FOR THE PURPOSES SPECIFIED IN THE PERMIT.~~



2. Construction or occupancy and use under this permit shall begin within \_\_\_\_\_ months, and construction, if any, shall be completed within \_\_\_\_\_ months, from the date of the permit. This permit shall be actually exercised at least \_\_\_\_\_ days each year, unless otherwise authorized in writing.

3. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or guidance of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, sanitation, and safety acceptable to the forest officer in charge.

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

16. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the preceding printed clauses will control.

17. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to \_\_\_\_\_ of the \_\_\_\_\_ and \_\_\_\_\_ part of this permit, foregoing form Special Use Permit.

This permit is accepted subject to the above conditions

Date _____	Permittee _____
Signature _____	Signature of issuing officer _____

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
SEQUOIA NATIONAL FOREST  
PORTERVILLE, CALIFORNIA 93257

IN REPLY REFER TO  
2720 (2300)

May 15, 1968

✓  
Mr. Jack Hays, Associate Editor  
Natural History  
Journal of the American Museum  
of Natural History  
Central Park West at 79th Street  
New York, New York 10024

Dear Mr. Hays:

The Mineral King questions posed in your April 17, 1968 letter to Assistant Regional Forester W.S. Davis are good ones; and we appreciate your consideration of the Forest Service position before writing an article.

I will answer your questions in the order given.

1. Walt Disney Productions (WDP) has spent over \$200 thousand dollars in research and planning towards the development of Mineral King as a family type, year-round, alpine recreation complex. The master planning is progressing well now, and hopefully will be ready for Forest Service review by December 1968.

WDP has a preliminary planning permit which would terminate in September 1969. By that date the Disney corporation must: (1) have a master plan satisfactory to the Forest Service, (2) a contract must be let to construct a portion of the all-weather access highway, and (3) funds must be programmed to complete the highway three years after the first construction contract. The last item has been met. We believe the other two requirements will be completed within the time limits. 3

The major problem with full scale development of Mineral King has always been access. The access road will be expensive, even with the modest standards proposed - 38 foot wide with occasional passing lanes, 6% to 8% grades, and minimum 850 foot radius curves. The peak load capacity would be about 1,000 cars per hour. The road may eventually be a limiting factor in the use of Mineral King; and this capacity could very well approach the safe ecological summer capacity of the site.



EXHIBIT K


✓


2


The California Division of Highways has a firm and approved highway location. Most of the planning and design surveying is completed. After many months delay, Interior Secretary Wall agreed to grant the State a road right-of-way across the Sequoia National Park in December 1967. As of this date though, the Department of Interior has not decided on their standards for the Mineral King road across the Park. Road construction is planned to start around the middle of 1969.

2. First you must be made well aware Mineral King is not wilderness and has not been such since the early mining days of the 1870's. There is a low standard county access road which annually is more heavily used - about 15% increase yearly in the past few years. There are about 720 acres of private land in six separate parcels in the Mineral King enclave on which many cabins and two separate small resorts have been built. There are 60 summer homes and a Forest Service station on National Forest land. There is a commercial pack and day-ride station and three developed public campgrounds. To call Mineral King de facto wilderness is misuse of the term "wilderness".

As the reputation of Mineral King draws more and more people, the impact on the limited facilities is starting to show. We feel confident, under careful planning and supervision, that a well designed and conceived alpine recreation development can better direct the impact on Mineral King's natural resources than the presently unrestricted use enjoyed for the past 30 years.

 The access road will end at a parking lot near the 7300 foot elevation which is well above the San Joaquin Valley inversion layer holding smog below. Because cars will not be moving around in Mineral King, because of up and down canyon daily breezes, and because Mineral King is above the inversion layer, qualified meteorologists claim there will be no smog.

 Dr. Martensveldt, the leading expert on the Sequoia gigantea, has studied the proposed road location and design and sees no threat to any redwoods. The State will bridge the few drainages where redwoods occur near the highway.

 The access road is two-lane with occasional passing lanes. The greatest mileage is below treeline, in the chaparral zone. The California Division of Highways has shown real enthusiasm in making this a scenic highway. Their standards of cut and fill landscaping are impressive. Government landscape specialists are also working with the State to insure the most attractive and useful. Clearing, soil disturbance and erosion will be kept to the absolute minimum.

3. We have "statistical indications of the need for Mineral King". The annual increase in summer use on California National Forests has been running about 10% and the winter increase close to 15%. The funding we receive allows around a 5% increase in summer recreation facilities, and as you know, the federal government does not build or operate winter sports facilities which are complex and expensive. Mineral King will be the largest developed out-door recreation complex available to the burgeoning Los Angeles population center. Mineral King will reduce the ski pressure on overcrowded Mammoth Mountain and should reduce the ski pressures to open the San Geronimo Wilderness Area.

Out-door recreation and population projections clearly show an increasing demand for recreation facilities. Governmental agencies alone have not been able to meet the demand. Mineral King is a fine example of coordination between private enterprise and government, working together, to meet a public demand on public lands. We are fortunate in having such a reputable and capable permittee with whom to work on the multitude of details to make Mineral King the outstanding alpine recreation area in the United States, if not the world.

It is a bit difficult to say what "the prime benefits to the State and to the Nation" will be of a Mineral King. As indicated, Mineral King was again proposed for development because of the rising public demand for additional winter sports facilities. (There aren't many suitable sites remaining in California.) A truly alpine setting, readily accessible to the population centers of California, is presently non-existent. Mineral King will provide millions of people an opportunity to see the alpine environment and if they wish, to gaze upon wilderness. Mineral King will provide a unique opportunity to contact, and hopefully, to educate many people in out-door manners and conservation concepts. And the Disney organization, with their expertise, stands ready to help.

Let me point out that California national forests presently have well over 1,000,000 acres of mountainland dedicated to wilderness. Future planned additions from the National Forests and Parks will put the total preserved acreage in California over two million acres. A very small percent of the population actually get deeply into wilderness, therefore, we feel most of the public should be allowed reasonable and conventional access to their lands for the broader spectrum of out-door recreation pursuits.

Mineral King is very unique in its winter sports potential, yet covers only about fifteen thousand acres. In an effort to best meet the needs of all people, we believe it represents a very logical balance of land use.

4. Local feelings to the Mineral King project are favorable. The large number of skiers are eager for Mineral King to open. Many people wish to see and enjoy Mineral King but some don't like the present difficult road. Of course the local county is anxious for Mineral King to start, because the principal industry now is agriculture, seasonal and economically uncertain.

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Opposition has come mainly from the preservation groups and summer home owners. Preservationists have often been misled through distorted comments and misstatements about Mineral King in their respective publications.

We have reproduced only a few articles on Mineral King for your review since the volume to choose from is large.

We can assure you the Forest Service will continue to put its full resource management experience behind the Mineral King development.

Sincerely yours,

*L.M. Whitfield*  
L.M. WHITFIELD  
Forest Supervisor

Enclosure

PLEASE RETURN  
TO  
PLANNING DEPT.

06-Jul-276

**ATWELL GROVE**

**REDWOOD CREEK GROVE**

Study by

**R. J. HARTESVELDT**

EXHIBIT

L



December 19, 1966

**Memorandum to:** Mr. H.E. Doffebach, District Engineer, District VI,  
California Division of Highways, Fresno, California.

**From:** Dr. Richard J. Hartenwaldt, Associate Professor of  
Biological Sciences, San Jose State College, San  
Jose, California.

**Subject:** Study of the Possible Changes in the Ecology of Sequoia  
Groves in Sequoia National Park to be Crossed by the New  
Mineral King Highway.

Submitted in fulfillment of Contract No. 6177-E.

INTRODUCTION

Under the provisions of the act of the federal Congress of September 25, 1890 which created Sequoia National Park, and under the provisions of the act of August 25, 1916 which created the National Park Service, this Service is thus required to maintain

"... the scenery, natural and historical objects in such a manner as will leave them unimpaired for the enjoyment of future generations."

Thus, the primary goal of the National Park Service explicitly qualifies the manner in which roads and structures may be built on national park lands. Primary values within the parks are given top protective priority in any plan. Damages to secondary values must be held to a minimum.

One of the primary values for which Sequoia National Park was established is the groves of giant sequoias (*Sequoia gigantea*) found there. All construction or land management within this park is subordinate to the protection of these trees which might result from such construction or management. It is known from previous studies that man's activities in sequoia groves influence the ecology of this species. The object of this study, then, was to determine what changes might occur from the construction of a new high-speed highway across the Atwell and Redwood Creek Groves and to elaborate on those changes which have a potential of being detrimental to sequoias in the vicinity of and downstream from the proposed road alignment.

A brief resume of the attributes of the giant sequoia and of the physical and biological nature of the two groves to be crossed will make possible the fullest comprehension of the problems which may be incurred and shed light upon the possible solutions to these problems.

The Atwell and Redwood Creek Groves are located on the generally south-facing slope of the East Park of the Klamath River at elevations varying from about 5,300 feet up to 8,800 feet on Paradise Ridge. The land is commonly steep and rocky although parts of it have gentle gradients and soil materials have formed or collected into deep accumulations. The Redwood Creek Grove is estimated to cover about 120 acres, most of which is in close proximity to the creek itself. The Atwell Grove is about 1,300 acres in size and is virtually all under the jurisdiction of the National Park Service. It is a superb grove of sequoias and bears the distinction of having in it a sequoia tree at a higher elevation than any other known - 8,800 feet on Paradise Ridge.

Most of the sequoias of the Atwell Grove are located above the proposed roadway, but many of them are along the drainageways below the main body of it where they have seeded because of the water transportation of both seeds and cones. These extensions will be shown later on maps. It is across these finger-like extensions that the new roadway is scheduled to be built.

While the age-classes of the sequoias are mixed in these two groves, reproduction has been scant since the time of logging in the late 1800's. None is to be found within the right-of-way of the proposed road. In 1963, Alay stated, "Reproduction in this grove (Atwell) is sparse and scattered, and is confined to favorable local sites such as stream banks, up-turned stumps, and snags. Some areas in the grove have no reproduction whatsoever." <sup>12/</sup>

It is not entirely clear what Alay meant by "reproduction." There are young trees in the area covered for this study, but they are mostly more than 50 years old, judging from their diameters and heights. The few small ones encountered appear suppressed by competition for light and soil moisture and very likely are of the same general age class. These trees are growing so slowly that it could be said that they are just barely surviving. Few in number, these suppressed trees will probably succumb within the next 25 to 50 years. Some will die earlier.

In all, there are 105 sequoia trees of all age classes below the proposed roadway centerline, of which 45 could be affected in some manner by the construction of the road.

<sup>12/</sup> Alay, T.J. Final Report on the Tree Mapping and Regeneration Studies in the Giant Sequoia Groves of Kings Canyon and Sequoia National Parks. Typed (spirit reproduction) contract report for the Western Region, U.S. National Park Service, San Francisco, California. 63 pp., maps, November, 1963.

(Fig. 1. Summary of Sequoia Trees Below Proposed Mineral King Highway, Sequoia National Park, California. *Omitted*)

### Possible Influences to Sequoia Ecology From: of Road Building

The sequoia, while not an indelicate tree, has at least two vulnerable points which must be given serious consideration for any and all road construction. First, mature sequoias are unsuccessively large and heavy. Their root systems, by comparison, are shallow and seemingly inadequate for the support of such great weight. This species is noted for its remarkable balance where both the tree and its soil environment are left undisturbed. Muir (1877) found sequoias growing on slopes up to 30 per cent and the author of this report knows of a 100 per cent slope in the Redwood Mountain Grove of Kings Canyon National Park which supports sequoia trees at least 5 or 6 feet in diameter. This balance, however remarkable, is easily upset where soils are set in motion through erosion or solifluction, where soils are rendered overly wet by the accumulation of water in excess of the natural average over the years, and by damage to the trunk of the tree, such as by fire. While the latter situation is not apt to be inflicted by road building, it must be pointed out that a high percentage of large sequoias have borne such scars for many years now and are thus already weakened. Studies by Hartesveldt (1963) showed that approximately 95 percent of all sequoias which had toppled to their death on sloping terrains fall in the direction of a large fire scar, this indicating the weakness of scarred trees.

Toppling over is the number one cause of sequoia death. Of those that topple, nearly all of them were located either on steep slopes or along a water course where the soil support was weakened by the presence of water. More than 80 percent of all sequoia trees encountered in this study are growing on slopes of moderate to great steepness, in close proximity to water courses, or both.

The nature of the substrate also plays a role in a sequoia's stability. This species has roots which usually do not penetrate the soil deeper than four feet. Most of the roots are within the upper two and one-half feet of the soil. In rocky areas, soil accumulation may well be two feet deep or less. Yet sequoias survive there to an old age literally perched on top of a solid rock base. As might be suspected, they also topple there quite readily because of the insecure anchoring of their massive weight. I believe this to be the most delicate of all situations for large sequoia trees.

For these larger specimens growing in deeper soils, stability may be weakened by increased soil moisture so that the tree topples over in a wind

stem or is overbalanced by snow piling heavily on its crown during winter or early spring. This was the reason assigned to the fall of the Iowa Tree in the winter of 1934 in the Mariposa Grove (Hartsoeveldt, 1963). The water accumulations here was due to a faulty valve at the pressure break in the local water system. In the Atwell and Redwood Creek Groves, depending upon the nature of the drainage system, serious attention should be given to the possible increase in water accumulations because of runoff from the impervious surfaces of the road which concentrate in these natural drainageways. Even temporary soil saturation could result in the falling of a sequoia. This aspect will be amplified later in the section of the report dealing with the individual drainageways under concern.

One other consideration that will probably only be a minor problem in these groves concerns a more-or-less permanent increase in soil moisture. If the water table is raised, sequoia roots within the zone of saturation lack for oxygen, become non-functional and die. Several trees so affected in the Mariposa Grove situation (previous paragraph) showed signs of decreased crown vigor which was clearly reflected in the reduced annual increment to the trunk. Two of the trees died as a result of this long-term increased soil water. Inasmuch as the anticipated increase in drainage water will be from snow melt which comes largely before the growing season, there will likely be little or no problem of this kind.

#### **Red Draining and Fill over Series**

If the roadway is constructed essentially as plotted on the topographic map prepared by the Division of Highways, not more than two sequoias will be affected directly by actual road construction. A sequoia of 11 feet diameter is on the up-slope side of Drainingway F. It has already been root-pruned to accommodate the existing roadway and the additional amount of pruning for the new road will be slight at most. It was shown in studies by Hartsoeveldt (1963 and 1965) that, while root-pruning caused a reduction in annual diameter growth, it has not, as of these dates, caused a tree to topple nor has crown vigor appeared lessened. While this seems to reduce concern for root-pruning, it should be taken for granted that, because of the role roots play in maintaining a sequoia's balance, a root-pruned tree would be more susceptible to toppling than if it had an entire root system.

Road ballast over the roots reduces soil moisture evaporation and thus far has resulted only in an increased rate of growth for sequoias so affected.

Only one sequoia of 4 feet diameter near Drainageway F is in a position to receive such a fill. It appears that the fill would be less than three feet deep and it appears that it would not be of damaging consequence to the tree.

Sequoias are a tree of the early stages of ecological succession. That is to say, they seed in most readily where disturbances to the soil occur. It is, then, to be expected that this species will probably seed in to the freshly exposed soil materials of road fills and possibly of road cuts. If cut-hauling of rock is practiced and if soil materials could be incorporated with the fill rock used, the potential of sequoia regeneration will be greatly increased in those areas where parent trees exist.

### Erosion Potential

The soils of sequoia groves are notably sandy and are developed largely over granitoid parent materials (Schnbert, 1937). Some are schistose, but there is little apparent difference in the resulting soil texture or growth potential.

In 1963, 100 12-inch samples were taken from 12 sequoia groves and analyzed for texture. Soil types represented were only sands (33 percent), loamy sands (59 percent) and sandy loams (8 percent). Sand contents varied from 82 to 92 percent and clays from around 2 percent up to 17 percent. Higher clay contents were found only in the subsoil of a few drainageways of low relief (Hartsevaldt, 1964). Clay is that fraction of the soil which is responsible for binding it together and resisting erosion. Thus, soils with such a small clay content are of a highly detachable nature especially where the protection of the leaf litter and root mat of plant communities has been disturbed or destroyed. There is much evidence of soil materials on the move in these two groves and I believe that it merits the most serious engineering consideration before any road building commences. To me, it constitutes the number one problem involved the preservation of park values.

As I studied the canyon of the East Fork of the Kaweah, I was impressed with the general instability of the soil and soil materials. The evidence of erosion are widespread. On the south side of the canyon west from Lookout Point, there are huge gaping gullies which appear not to be influenced by either roadway or trail runoff. I suspicion grazing to be the reason. On the north side of the canyon a quarter to a half mile east of the Lookout Point Ranger Station and below the road, there may be seen considerable areas of raw, bare ground both in gullies and on ridges. Vegetation, for some reason,



has not been able to reestablish itself although all around it vegetation is dense. Likewise, across the present road from the Atwell Ranger Station is a broad expanse of nearly bare soil materials on a slight grade which seemingly should be vegetated. Even though these soils have notably poor, shallow profile development, the lack of plant life on them is without satisfactory explanation. The salient point is that the land here is highly erodible.

Soil samples taken by me from the Atwell Grove show that clay contents are only 1 to 3 percent of the total and that sand is as high as 91 percent.

Man-accelerated erosion is much in evidence. The up-slope cut surfaces for the present roadway show abundant signs of surface erosion and soil slumping. All of these materials are carried by runoff into the roadside drainage gutters and eventually transported in the cross culverts to the down-slope side. The road surface and road ditches along side the road are also undergoing active erosion and the materials are ending up in the drainageways below.

Some of the culverts extend several feet out over the down-slope edge so that water is dropped anywhere from a few feet to the soil below up to as much as 8 or 10 feet. Erosion, which is a function of both speed and volume of the water, is thus greatly increased below at the point of impact. Erosion channels appear beneath nearly every one of these. While most of these gullies are still relatively small, one of them is huge (Fig. 2) with tons of soil materials having been washed out of it and deposited in the drainageway below. Sand deposition is abundantly apparent where the water from these culverts joins the creeks. That it came from the roadway area is evident by the man-produced litter which is found mixed in with the sediments. It must be assumed that gullying by runoff is a phenomenon which, without special attention by man, usually goes on at a rate of speed in excess of plant stabilization. Each incipient gully, then, has the potential of extreme erosion.

Accumulations of eroded sediments in the canyon bottoms is considerable, especially in those with lesser gradients. However, I did not recognize any one place which had an accumulation of the proportion that might be dangerous to local sequoia trees. All of the gradients may be too steep for such an occurrence.

The erosion potential and the subsequent sedimentation are my chief concerns in the building of any road in a sequoia grove. I most strongly urge extreme care in the design of the drainage system for this roadway to

(Fig. 2. An immense gully below the road culvert on the west side of Drainageway E. *Omitted*)

avoid accelerated erosion and soil slumping.

#### Reports on Individual Drainageways

Each drainageway occupied by sequoias in the Redwood Creek and Atwell Groves was visited in the field. Identification letters were assigned to these drainages and are explained in terms of state triangulation markers as shown on the topographic maps provided by the State Division of Highways.

Stream gradients have been calculated for those portions of the streams below the proposed roadway and their profiles drawn as have the cross-sectional gradients. Sections of the state topographic maps have also been reproduced to show sequoias in the vicinity of and down drainage from the proposed roadway.

X Drainageway A - Below triangulation marker N-21. See figures 3, 4 and 5.

Average stream gradient for this section - 25 percent.

Although the maximum cross sectional gradient averages on 38 percent, it is much steeper in some places and the soil is shallow throughout. The erosion potential here is moderately high. There is evidence of soil slumping and water erosion in several places.

There are two fallen sequoia trees in this drainageway which grow in very shallow accumulation of soil over solid rock which gives evidence of the instability of the soil in such a situation.

Of the total of 15 sequoias in this drainageway below the proposed road crossing, 13 are growing in close proximity to the stream and could be endangered if additional water collecting on the new highway are diverted full force into the main channelway. No one of these sequoias is large, 27 inches being the largest. The smallest is only two inches diameter breast height.

One large 18-foot specimen has its root system exposed to the creek but appears to be high enough above the creek bed to withstand additional drainage water.

Some of the sequoias are small and suppressed because of insufficient light. Additional soil moisture would very likely weaken them in competition with the other trees. Additional soil moisture of moderate to high proportions would almost certainly bring about their death.

This drainageway includes California nutmeg (Torreya californica Torr.) which is a species not common in sequoia groves.

(Fig. 3. Drainageway A, Atwell Grove, Sequoia National Park,  
California. *Omitted*)

(Fig. 4. Stream Profile of Drainageway A, Atwell Grove, Sequoia National Park, below triangulation Marker H-21. Omitted)



(Fig. 5. Cross Sectional Profile of Drainageway A from road center intersection with channel. *Omitted*)

Drainageway 1 - Below triangulation marker H-34. See figures 6, 7 and 8.  
Average stream gradient for this section - 34 percent.

Weathered rock materials are deep in most parts of this drainageway below the proposed road crossing. The stream is only intermittent and shows little evidence of surface flow. Accumulations of sediments, however, are an indication of water high enough to transport it.

There will very likely be few problems encountered from additional runoff accumulating in this drainageway. Of the 13 sequoias below the proposed road, 9 are along the creek and roots might possibly be affected by additional water. Two large sequoias are growing right against the drainage channel, each leaning toward the creek and could pose a problem of toppling in the event the soil did become wetter.

(Fig. 6. Drainageway B, Atwell Grove, Sequoia National Park,  
California. *Omitted*)

(Fig. 7. Stream Profile of Drainageway B, Atwell Grove,  
Sequoia National Park, below triangulation Marker H-34.  
*Omitted*)

(Fig. 8. Cross Sectional Profile of Drainageway B from road center intersection with channel. *Omitted*)

X Drainageway C - Below triangulation marker I-9. See figures 10, 11 and 12.

Average stream gradient for this section - 18 percent.

This drainageway is very rocky with thin accumulations of soil material throughout much of the portion surveyed. The stream channel is nearly all solid rock so that the volume of water transported is not apt to diminish much with distance from the road crossing. Thus, erosive potential and the soil softening potential are high throughout this drainageway. In addition to this, more water is carried in this drainage system than in most. High consideration should be given the handling of additional roadway drainage to be emptied into this canyon.

Of the 24 sequoia trees in this drainageway, 8 are near enough to the stream channel to be affected either by undercutting or by increased soil moisture. Some of the sequoias are small and suppressed and will very likely succumb to increased soil moisture.

It should be noted that some of the sequoias in this drainageway are actually much closer to the stream edge than shown on the state topographic map and are thus more susceptible to any increased water than is at first evident on the map. Their positions have been adjusted roughly on the following map (Fig. 10).



(Fig. 10. Drainageway C, Atwell Grove, Sequoia National Park, California. *Omitted*)

(Fig. 11. Stream Profile of Drainageway C, Atwell Grove, Sequoia National Park, below triangulation Marker I-9. Omitted)

(Fig. 12. Cross Sectional Profile of Drainageway C from road center intersection with channel. *Omitted*)

Drainageway 2 - Below triangulation markers I-16 and I-17. See figures 13, 14 and 15.

Average stream gradient for this section - 27 percent.

This drainageway has a relatively small watershed so that the volume of water it carries is small. Despite a fairly steep stream gradient and canyon sides (42 percent), soil materials have accumulated deeply. Water runoff has been slight and the actual drainage channel itself is inconspicuous. Only two sequoias are down-slope from the proposed road crossing. One is about 8 feet in diameter and the other about 15 inches. There are many impressively large incense cedars in this area.

Both sequoias are near enough the drainage channel to be influenced by any increased soil moisture. Unless a large quantity of water accrued here, they probably would not be seriously affected.

(Fig. 13. Drainageway D, Atwell Grove, Sequoia National Park, California. *Omitted*)

(Fig. 14. Stream Profile of Drainageway D, Atwell Grove, Sequoia National Park, below triangulation Markers I-16 and I-17. *Omitted*)



(Fig. 15. Cross Sectional Profile of Drainageway D from road center intersection with channel. *Omitted*)

\* Drainageway E - Below triangulation marker I-21. See figs. 16, 17 and 18.

Average stream gradient for this section - 25 percent.

Drainageway E has a good flow of water and is rocky like Drainageway C. Erosion, soil slumping and sedimentation are abundantly evident here. Four large fallen sequoias accentuate the feeling of instability in this area. At least 6 sequoias are growing right against the creek bank near the junction of Drainageway F. One 11-foot specimen above the road crossing (shown on map for Drainageway F) will possibly require some root pruning and a 4-foot sequoia will require some addition of road ballast over its root system. The greatest concern for sequoias in this drainageway, however, is for sequoias growing along the creek. The 4-foot specimen whose root system will be buried with road ballast has a healthy, vigorous crown and very likely will respond favorably to the road construction.

Sedimentation is heavy in this drainageway. An immense gully mentioned earlier (Fig. 2) has been cut below a high culvert water drop and many tons of soil material are deposited along the creek channel below.

Like Drainageway C, water quantity and erosive potential are not apt to diminish much with distance down stream from the proposed roadway.

(Fig. 16. Drainageway E, Atwell Grove, Sequoia National Park, California. *Omitted*)

(Fig. 17. Stream Profile of Drainageway E, Atwell Grove, Sequoia National Park, below triangulation point I-21. Omitted)

(Fig. 18. Cross Sectional Profile of Drainageway E from road center intersection with channel. *Omitted*)

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Drainage F - Below triangulation marker I-25. See figures 19, 20 and 21.  
Average stream gradient for this section - .41 percent.

This drainage is not nearly as rocky as drainage C and E. Development of soil materials is moderate to good and the water volume is apparently small. Although soil erosion potential seems to present little concern, there are accumulations of these materials backed up behind logs which have fallen across the creek indicating at least occasional high water.

Of the 12 sequoias in this drainage, only two are apt to be affected by any increased runoff. There are others, however, which might possibly be affected by increased soil moisture.



(Fig. 19. Drainageway F, Atwell Grove, Sequoia National Park, California. *Omitted*)

(Fig. 20. Stream Profile of Drainageway F, Atwell Grove, Sequoia National Park, below triangulation Marker I-25. Omitted)

(Fig. 21. Cross Sectional Profile of Drainageway F from road center intersection with channel. *Omitted*)

\* Redwood Creek Drainage - Figs. 22, 23, 24 and 25.

Average stream gradient for this section - 13 percent.

✓ This exquisite canyon will undoubtedly require the greatest care of all to cross with a road. Although its gradient is only about 13 percent, its walls slope steeply up from the creek bed for an average of 72 percent. In several places, the slope exceeds 100 percent. Of the seven streams covered in this study, Redwood Creek carries the greatest volume of water and has the greatest erosion potential. The upper part of the surveyed portion is rocky and has thin accumulations of soil, while the lower part, where the gradient is less, has much deeper soil accumulations.

✓ Erosion and sedimentation are everywhere evident. Much sand from the present roadway has been carried into the stream bed and has settled out behind the jumbles of logs and limbs there. In spite of plans to bridge this deep canyon because of the depth, accelerated erosion is very likely to be a major problem no matter what engineering activities occur there. All possible attention must be given to minimize construction disturbances to the steep banks and the disposition of roadway should also be carefully planned and implemented to avoid any erosive accumulations of water at any one point.

✓ Although only three sequoia trees are in jeopardy below the proposed roadway, the potential for erosion and sedimentation is high and could be disastrous if it occurred regardless of its effects upon sequoia trees.

Of the 32 groves of giant sequoias familiar to the author, this drainage provides one of the most unique communities of plants he has seen in association with sequoias. This in itself makes the utmost protection desirable. Contrary to the community composition in the other drainage channels, there is very little white fir (Abies concolor (Gord and Glend.) Lindl.) which usually constitutes the most abundant tree species in the later stages of plant succession. In its place is an unusual assemblage of very large white alders (Alnus rhombifolia Nutt.) with trunks approaching the maximum diameter range of 2 to 3 feet. There are also many very large canyon live oaks (Quercus chrysolepis Liebm.), large incense cedars (Libocedrus decurrens Torr.), ponderosa pine (Pinus ponderosa (Dougl.) ex p. & C. Lawson), sugar pines (Pinus lambertiana Dougl.), California nutmegs (Torreya californica Torr.), California bay (Umbellularia californica (N. & A.) Nutt.) and deer brush (Ceanothus integrifolius N. & A.).

Other plants scarce in sequoia groves are alms root (Hesperis sp.),

Western asplen (Rhododendron occidentale (T. & G.) Gray) and one of the stone  
crops (probably Cotyledon sp.).

The plant communities of this drainage are of great beauty and of  
scientific interest. (Fig. 25.)

(Fig. 22. Redwood Creek Drainageway, Redwood Creek Grove, Sequoia National Park, California. *Omitted*)



(Fig. 23. Cross Sectional Profile of Redwood Creek Drainage-way from road center intersection with channel. *Omitted*)

(Fig. 24. Stream Profile of Redwood Creek Drainageway,  
Redwood Creek Grove, Sequoia National Park. *Omitted*)

(Fig. 25. View of Redwood Creek showing uncommon assemblage of white alders in a sequoia grove. *Omitted*)

Summary

1. In the two groves, there are a total of at least 105 giant sequoias below the proposed highway. Of these, 45 are in a position of possible jeopardy because of road construction. On some of these, the possibility is admittedly slight.
2. Soils in the two groves are notably sandy with clay contents too small to be binding. Hence, the soils have a high degree of detachability and are expected to erode severely with disturbances.
3. The profiles of the streams vary from 13 to 81 percent and the cross-sectional profiles exceed 100 percent in some places. Steepness of slope is a major factor in soil erodability.
4. Erosion potential is greatest in Drainageways C and E and in Redwood Creek. The latter, with slopes averaging 72 percent, presents a considerable problem both in construction and from increased runoff resulting from the road surface.
5. The greatest concern in the engineering design should be the safe disposition of roadway runoff. Every attempt should be made to avoid the accumulations of water in erosive proportions. Streamside sequoias (and other species too) are less stable where runoff wets the soil successively or erodes it from the supporting roots.
6. Road cuts should be sloped and possibly planted to avoid the slumping of soil materials and its subsequent erosion into the stream beds.
7. Redwood Creek Canyon represents an ecological association which is at least rare in sequoia communities and thus merits especial care. It has the steepest walls and carries the greatest volume of water of the seven drainages in this study.

Respectfully submitted,

*Richard J. Hartsevoldt*  
 Richard J. Hartsevoldt

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Ex 17

**EXHIBIT E**  
 The Disney Proposed Master Plan for the Development of Niggerel King, California  
 (Entire master plan, in book form, submitted in testimony)

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 WALT DISNEY PRODUCTIONS





January 21, 1969

Mr. Costley:

After one quick review of the Mineral King Master Plan, I have a few comments to offer:

4 1. Horse concession. - It appears that this could cause serious problems in sanitation and esthetics where there is very limited area in which to operate. Presumably, this would be a large operation involving at least 50 horses. The trails would have to be surfaced to control erosion. More serious, however, would be sanitation and the need to supply all needed forage. ?

2. Alternatives for sewage disposal. - The plan shows 2 primary sewage facilities and provides that effluent will be filtered through soil enroute to the stream drainage. With the large quantity of daily sewage discharge expected, I would question whether the soil can adequately handle the effluent. Should alternatives be considered, such as piping effluent out of the canyon, etc.?

3. Check dams to collect debris. - The Plan is not clear on the purpose or function of these dams. Presumably they are to prevent damage from flooding and from debris accumulation. Is a dry-dam type structure planned? Also, what is the source of the debris? Will it result from timber cutting on the ski runs? ?

In conclusion, I would hope that we study the impacts of this concession for a long time before permitting another one. a

W.B. Hanson  
 E. O. Hanson

Director of Wildlife Management

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UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

20

MEMO TO: 2730 Special Use Permit  
(2200)

January 21, 1960

FROM: Special Use Permit (Mineral King)



TO: Director, Division of Recreation

The following comments of the Disney Master Plan for Mineral King are provided for your consideration.

Several statements in the plan refer to "slope revegetation and grooming." It is suggested that a close look be taken at the degree of slope revegetation permitted. It would appear that such treatment should be limited considering the amount of snow pack. Planning should provide for maximum retention of native cover vegetation and effective stabilization and cover establishment on all areas disturbed during development. No mention could be located relating to restoration measures for disturbed areas (slopes, pipelines, trails, etc.).

We are not fully appreciative of the material concerned with "Flood and Erosion Control." Floods have not presented a particular problem in this area to the best of our knowledge. Perhaps action is needed under the development plan to correct normal cutting and washing.

To what degree has the compatibility of planned horse programs with resource needs been determined? The projected use by people, in itself, will have a very real impact on these fragile soils and vegetation without the additional effect of horse use. Any horse activity as well as others influencing soils and vegetation would well utilize the services of an ecologist during the planning stage. //

One gets the impression that the Region largely accepts the Disney Plan in its present form. Granted, the recreational planning aspects of the project are based on thorough and outstanding research. However, there is real need for basic consideration of soils and vegetation.

We appreciate the opportunity of reviewing this material.

for *[Signature]*  
R. H. Burt  
Director of Range Management

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EX-101

U.S. GOVERNMENT  
UNITED STATES GOVERNMENT

Department of Agriculture—Forest Service  
San Francisco, California 94111

# Memorandum

Forest Supervisor, Sequoia N. F.

Re: M. 2510

W. S. Davis, Chief, Division of Recreation

Date: January 9, 1967

Plans - Preliminary Site Studies Proposed  
Development of Mineral King

Version: 11/18/66

We are returning the Bums and Moore report of preliminary Mineral King studies, accompanied by copies of comments from the Division of Engineering and the Division of Range and Wildlife Management. Watershed Management also reviewed the report but did not prepare an analysis memorandum, indicating they would go along with the comments of the other two Divisions.

You have already received a copy of our memorandum of November 29, 1966 requesting advice on specific points from the three Divisions.

- ① Engineering may not have been aware that in accepting the Bums proposal, we agreed to the concept of a village with underground automotive service facilities for deliveries, maintenance, etc. This brings with it a need for land modification, earth moving, and possibly stream channel changing beyond what we might normally permit. The underground roadways and chambers must either be tunneled or built partially on the surface, boxed in and backfilled. The report favors the latter, which means a great deal of earth and debris moving. But we can require that all this be accompanied by an effective landscaping program. ②

Both Engineering and Range and Wildlife recommend developing a water supply without adversely affecting streamflow. The report suggests diverting 900 gallons per minute from a point low down on Mineral Creek. This would materially affect streamflow between that point and the confluence of Mineral Creek with the Kaweah River. However, the distance would be short, a few hundred feet at the most. A good part of it would fall within the village itself, and might even be underground. We have a situation here where fishery considerations would assume less importance than normally as far as the lower end of Mineral Creek is concerned. But the reduced flow would also have an effect on the Kaweah River downstream from Mineral Creek, and here is where the factor of return flow from effluents should be considered.

Engineering agrees with us that the number of debris dams seems excessive. However, they have also mentioned to us their high regard for Mr. Paul Buman, who is listed on the last page of the report as an engineering consultant for the project. He worked for many years on the Los Angeles County Flood Control District on runoff and debris problems within the Angeles National Forest, and has a good concern for protecting the land. He should be a good contact to work with.

On the matter of water rights, the most recent position of the Forest Service is that the establishment of the National Forests reserved to the government

EXHIBIT

the right to use as much water originating therein as is necessary for the management of the multiple resources. In general we have included the needs of our permittees under this assertion of rights, but the substantial water needs of the Disney project may perhaps place it in a special category. Mr. Fair suggests that you make no commitments on this point now, but make a specific request to him for review and action as soon as the first submission of Disney development plans is made.

The final paragraph in the Division of Range and Wildlife's memorandum of January 6, is one with which everyone surely agrees in principle. The impact is certain to be heaviest at the village site and on the valley floor. By accepting the development proposal we have also accepted that some effect on fishery values, streamflow, vegetation, soil, and other resources must be provided for. I'm certain you agree that any comments to Walt Disney Enterprises on the Dunes and Moore report would be untenable if they were not made in full recognition of this.

The first paragraph of Mr. Wycheff's letter of November 13, 1966 to Robert Hahn perhaps implies that further comment on the report would be sent to Walt Disney Productions by the Regional Office. We think it best, however, that you follow up with a further letter based on our review observations, and send us a copy. Thus we will continue to maintain direct communication between the Regional Office and the permittee.

Enclosures

cc: Regina H.F.

*L. C. Davis*

UNITED STATES GOVERNMENT

Department of Agriculture—Forest Service  
San Francisco, California 94111

# Memorandum

TO : Recreation

File No. 2310

FROM : Range & Wildlife Management

Date January 6, 1967

SUBJECT: Plans - Preliminary Site Studies Proposed  
Development of Mineral King  
Sagehen N.F.

Year released 11-29-66

We have reviewed subject report, and herewith supply our comments and forward report to interested management as requested in Mr. Davis memorandum of November 29, 1966. We have included the comments of the Sagehen and R.O. Division of Engineering in our review, and are in basic agreement with their findings as qualified in our marginal notes thereon.

We feel the report is rather superficial, and the investigations it covers apparently very general and sketchy. Consequently we consider many of the assumptions made and conclusions reached are inadequately founded and unacceptable. We have indicated some of our thoughts in brief marginal notes in the report; our major points, preceded by answers to your same questions, follow:

## 1. Streamflow releases

From the standpoint of quantity, depending upon method of timing, of collection and return to streams, and well downstream of major point of return, possibly yes. From the standpoint of quality, probably not. Additionally there would be an appreciable reach of stream seriously damaged by discharging between points of diversion and return.

## 2. Channel diversions

We would be basically very strongly opposed to any stream diversions in this typically small-stream, low-flow area. If the term "diversion" is taken to mean re-alignment, or channel-change, we are still opposed in principle but would be willing to consider specific proposals thoroughly on an individual case basis; a guiding principle would be to tolerate very few even well-suggested instances.

## 3. Valley (s)

The proposed "Valley Debris Dam" site and plan looks very damaging to fisheries alone, in addition to the obvious general objections. An appreciable reach of mainstem and several important tributaries would be affected, in an area where all the stream capacity available is singularly important. We feel the potential of this debris basin to provide general water-oriented recreation is very limited, and practically non-existent for fisheries.

EXHIBIT

Q

④

2.

The total basic concept of development appears badly biased in orientation toward a highly artificial, continued situation, without any real attention to ecological factors and needs to multiple use management. The extent and nature of proposed alteration of the basin is unacceptable to us--the damage extend beyond effects on fish and wildlife, and these alone are critical.

Specifically, stream diversions and channel treatment, flood and debris control, surface water supply development, and sewage disposal proposals are all of a nature we find severely damaging or unacceptable.

It is recognized that development of high intensity year-round recreational use in this restricted fragile sub-alpine area is bound to result in pronounced impacts and certain unavoidable changes. However, we feel it is imperative to retain much of the original basic ecological uniqueness of this basin, and that this is possible with careful, thoughtful planning. It is not evident that the consultants have brought this approach to their work so far, and we strongly urge that the Agency, with your help, assist in correcting this weakness by full comment on the Report and personal briefing if necessary.

cc: WBI (w/Report)  
H. J. [unclear]



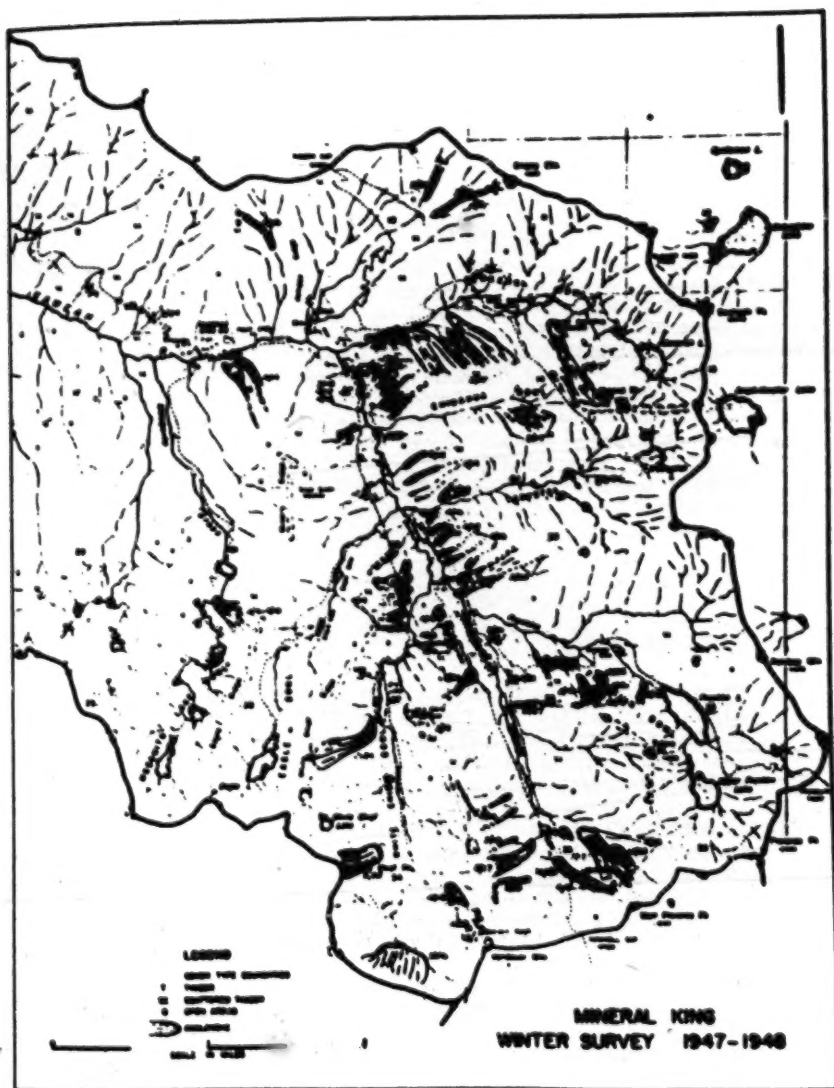


EXHIBIT R

Veta Weyerhoff

2300

November 15, 1955

Mr. Robert Hicks  
Walt Disney Productions  
900 South Buena Vista  
Burbank, California 91505

Dear Bob,

We appreciate your giving us the "Report of Preliminary Site Studies, Proposed Development of Mineral King for Walt Disney Productions by James and Moore, account number 6186-001-02. We will send our copy to the Regional Office for further review and comment. In the meantime the following are our comments:

- (1) In the report summary, under No. 3. Nowhere in the report is the exact location of the "source of select fill material" defined. I would like to know more specifically where this source of material is.
- (2) On Page 7, second paragraph. We presume the use of large boulders for stream and channel stabilization will be in the form of placing these boulders in correct positions rather than just dumping them at certain locations where stream and channel stabilization are thought to be required.
- (3) On Page 9, first paragraph. No question the advisability of changing the river channel as indicated. There is not much room at that location, and the use of equipment in the existing channel may be more detrimental than the slight additional area made available. Also there are numerous trees growing in the river channel and we want to have these remain in place.

Under the village area, I wonder if your plans have changed as to the location. The original promise was that the new village would straddle Kaweah Creek. Now it appears that the entire village area will be to the west of Kaweah Creek extending down to Carol Peak. This, of course, puts the village across the present avalanche path. I wonder if the report actually means this:

- (4) Page 11 under Aspen Flat Area. I'm not quite sure where they propose to possibly shift the existing Kaweah River channel.

EXHIBIT S

The only spot would be to the north of Aspen Flat proper where the river channel spreads out into the flood plain. If this is the idea it may have some merit; but if they are thinking of changing the channel further to the south along the eastern edge of Aspen Flat then we question this drastic change in topography.

- (5) Page 20, number 1. Do wonder if all the check dams proposed would be needed, how they would be constructed, and what access would be required to construct such dams. I don't believe we can stand the slope disturbances of building access roads to each of these dam sites.
- (6) Page 21, first paragraph first sentence. The use of the check dam structures may be effective for water runoff but would have little value as regards snow avalanches. They are too small and would be quickly covered by snow and in the long drainage coming from Empire Mountain would not reduce the slope sufficiently to retard an avalanche.
- (7) Page 22, number two, Mammoth Creek - There may be a conflict in putting check dams in Mammoth Creek with the fisheries. It may be we can establish a better fish habitat in Mammoth Creek which would enhance the value of that drainage.
- (8) Page 23, second paragraph. Do question the advisability of such a large dam. Artificially such a structure 30 feet high would not be compatible with the site and would have an adverse effect on the scenery. A small dam with a snow bank behind it may be acceptable.
- (9) Page 26. In general any channel work done in live streams must take serious consideration of sedimentation. We must work closely with the California Fish and Game Department on all activities to ensure the fisheries habitat remains in a satisfactory condition. Also channel improvement work should be done with an eye to retaining as much natural appearance as possible.
- (10) Page 27. A one cubic foot per second flow down the main drainage we do not feel is adequate for fish and aesthetics. We will make further study on the needs here but tentatively we should consider a minimum of 1.5 to 2 cubic feet per second flow down the Mammoth from Mammoth Ridge.
- (11) Page 33. Any sewage treatment must have the complete approval of the various public agencies involved with sanitation and stream pollution. Unless chemical and complete treatment of effluent is considered we doubt whether direct discharge into the Mammoth River would be satisfactory. Again consideration must be given to the use of the waters below for domestic purposes, swimming and fishing.

In general the report is good. It shows the areas needing further study and instrumentation. We hope the Disney Corporation will utilize the many suggestions in the report to further the knowledge of the Daniel King area.

Sincerely yours,

*PJW*

P. J. WYCKOFF  
Daniel King Staff Specialist

**Enclosure**

cc: Dale River  
cc: P. J. Wyckoff ✓  
cc: Regional Office

OCT 1 6 1958

  
Dear Orville:

Your letter of September 27 referred to the proposed road to General King to service the planned Disney development.

No permit has been issued for construction of this road because the National Park Service has not reached agreement with the Forest Service and State Highway Department as to location and design standards of the road, and plans for needed utility lines. When these matters have been resolved, the permit will be issued.

In addition to our desire to minimize the damage to park values by this road, we are concerned about what we have been told concerning the size of the planned Disney development. Will one two-lane road of park standards be adequate, or will Interior later receive a request for another road?

Sincerely yours,

(s) Stewart

Secretary of the Interior

Hon. Orville L. Freeman  
Secretary of Agriculture

WASHINGTON, D.C. 20240

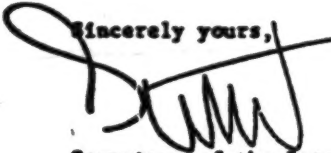
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Dear Orville:

I am enclosing, for your information, a copy of the letter from the National Park Service to the Chief of the Forest Service, giving approval to the State of California, Division of Highways' selection of a route for a road through Sequoia National Park to Mineral King. This, of course, is subject to agreement on design standards.

I ask your continued support to make certain that the road constructed will be a credit to our respective Departments. I also would like to repeat the request contained in my letter of October 16, that Interior be assured that the Disney development will not require additional road access across park lands at a future date.

Sincerely yours,



Secretary of the Interior

Hon. Orville L. Freeman  
Secretary of Agriculture  
Washington, D. C.

Enclosure



U. S. DEPT. OF THE INTERIOR

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
WASHINGTON, D. C. 20240

13027-200

NEW 13 12

Mr. Edward P. Cliff  
Chief, Forest Service  
U. S. Department of Agriculture  
Washington, D. C.

Dear Mr. Cliff:

Following the meeting in San Francisco on October 7, and subsequent field meetings, we have reviewed all material available to us on the proposed location of the Mineral King road. On the basis of this review, we now agree that the Division of Highways' route should be selected.

Certain of the standards, as now proposed by the State, are not acceptable to us. We suggest the Division of Highways and Forest Service work with us to establish satisfactory design criteria. We propose that many of our consultant's recommendations on the use of additional bridges, tunnels, viaducts, cribbing, retaining walls and other methods be fully exploited so, as Secretary Freeman stated, "this will be a model project that will be copied, not criticized." The National Park Service will assign personnel to work with the Forest Service and the Division of Highways in the selection of standards, design and during construction.

We request your assurance that the Forest Service and the Division of Highways will work with our people to construct a road of park-like quality which will be a credit to the Forest Service and the National Park Service.

Sincerely yours,

(Sgt.) Edward A. Hummel

Edward A. Hummel  
Associate Director

cc:  
Hon. Orville L. Freeman  
Secretary of Agriculture  
Washington, D. C.

EXHIBIT V





U.S. GOVERNMENT PRINTING OFFICE

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
WASHINGTON, D.C. 20240

12027-02

April 1, 1948

Mr. James G. Cooper  
7313 Gladden, N. E.  
Albuquerque, New Mexico 87110

Dear Mr. Cooper:

Secretary of the Interior Wall has asked that we reply to your letter regarding the proposed Mineral King development as it relates to Sequoia National Park.

It was with great reluctance that Secretary Wall agreed with Secretary of Agriculture Freeman that the access to Mineral King would be by a road through a portion of Sequoia National Park.

The preservation of the natural beauty of the national park, the perpetuation of an interesting and important natural ecological system, and the construction of a road to meet National Park Service standards will all be a part of a cooperative agreement relative to this development. We assure you that the values of Sequoia National Park will not be overlooked.

Sincerely yours,

*Herbert*  
Director

EXHIBIT W

# REPORT ON ROAD TO MINERAL KING

ON

## SEQUOIA NATIONAL PARK, THREE RIVERS, CALIFORNIA

At the request of the Associate Director of the National Park Service, William Everhart, an investigation was made of the proposed highway from Three Rivers, California to Mineral King, which highway, if built, will traverse the southwesterly section of Sequoia National Park. A map showing the general location of this road appears as Plate I of this report.

The California State Highway Department proposes to build a two-lane, two-directional road across the National Forest and National Park lands to service the proposed recreational developments in the Mineral King Canyon.

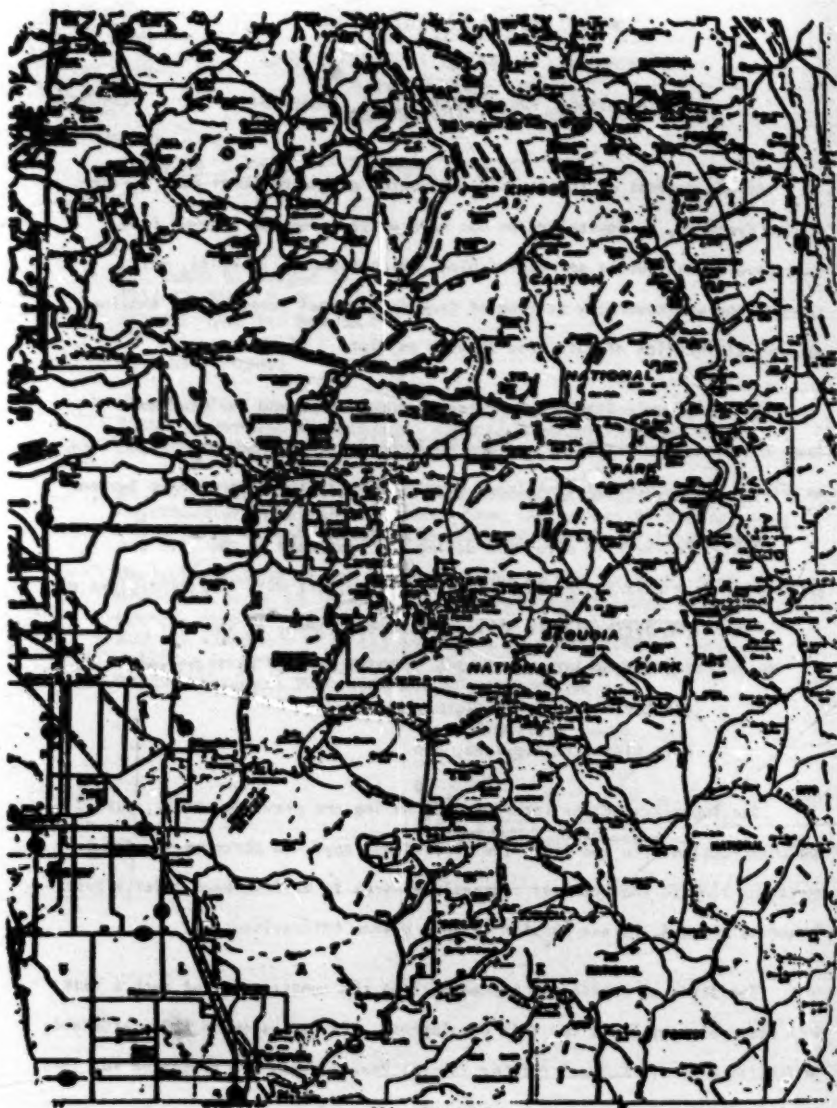
Visits to the site were made during the last week of May 1968 and conferences were held at the Sequoia Park Headquarters with representatives of:

- The National Park Service, U.S. Department of Interior
- The U.S. Forest Service, U.S. Department of Agriculture
- The California State Highway Department
- Walt Disney Enterprises, Inc.

The Secretary of the Interior had, during the previous winter, agreed to the construction of a two-lane, two-directional road, to serve as the transportation link to the proposed recreational area to be developed under a permit issued by the U.S. Forest Service by Walt Disney Enterprises.

The State of California had authorized the construction of such a road with state highway funds for this development. As far as could be ascertained, no Federal Highway, Federal Park or Federal Forest funds are allocated for this construction.

EXHIBIT X



Prior to the approval by the Secretary of the Interior, studies had been made by Walt Disney Enterprises as to whether or not another mode (other than individual cars, trucks or buses on a public highway) of transportation would be economical and feasible. Apparently, other forms were eliminated and this study was made only on the basis of a highway and normal highway use, where it should be, and how it should be built to preserve to the greatest degree, the ecological purposes of the park.

The purposes and objectives of Sequoia and Kings Canyon National Park as given in N.P.S report of April 1966 entitled "National Sciences Research Plan" as follows:

"The various Acts of establishment, and related legislation, indicate that the primary purposes and objectives of these parks are to exemplify and maintain for posterity (1) The giant Sequoia and all other Sierran vegetation types present in the parks; (2) All native animal life associated therewith; (3) All other natural features including the geology, which collectively typify in these parks the primitive wilderness scenery of the Sierra Nevada."

Obviously, any road construction to present-day standards could not be built through this area without affecting the ecology of the area. Within the road prism (cuts and fills) plant life would, of course, be disturbed and since the top soil for regenerating plant life is sparse, early vegetative cover on cut and fill slopes would be very slow in developing.

More than that, the road, if primarily based on cut and fill construction, would be a barrier to wild life and visitor movements throughout this area of the park. Animals and men would have to cross the road to the risk not only of such persons and wild life, but also to users of the highway.

Among the wildlife species of this area are deer, wolf, mountain lions, beaver, bear and big horn sheep. The retention and control of these species would be effected if relatively free movement up and down their slopes was not maintained.

With the increased visitations to the park has come a considerable increase in back country camper use through a section of which the proposed road would pass. (See "Back Country Management Plan," 1963, U.P.S).

It would appear, therefore, that to reduce the impact on this area, any road should be devised with a minimum of new raw slopes and with a maximum of freedom of movement across the road location.

The primary purpose of the proposed highway is to serve the Mineral King development. It is anticipated that up to 14,000 persons will be served here each day. Of these, approximately two-thirds will be daytime visitors (traveling to and from the area in the same day) and one-third will be overnight visitors staying one or more nights at Mineral King.

In addition, at Silver City at the approach to Mineral King Canyon, there is proposed another development of year-round residence units, the present number of which has not been firmed up. There are privately-owned camps, ranches, etc., along the transportation corridor; these are far as far as their effect in traffic load is concerned, but they must be considered by any future undertaking.

The California Highway Department estimates its peak travel load in any one direction to be 850 vehicles per hour, primarily passenger cars with some buses. Service trucks can be scheduled for off-peak operation. About 150 campsites operated by the Forest Service will continue the usage, although small, of home trailers and travel camper units.

I consider the projected peak hour flows, 850 vehicles per hour, low for this service. It can only be maintained if at the end of a ski week-end, vehicles are not allowed to leave the area in a period stretching over less than three hours. Whether or not this control can be maintained is doubtful.

#### Recommended Solution No. 1

There already exists an existing road serving Mineral King from Route 150 at Three Rivers.

It is a widened trail which winds up the mountain, has grades in excess of 15%, is narrower than two lanes in many areas, and would not handle the anticipated traffic. It is only partially paved with a bituminous surface treatment. While the existing road will not handle the anticipated traffic load, it does represent existing fill and cut scars throughout the area. It serves existing private properties and would serve as a construction road.

To locate a new road in another corridor would mean:

1. Duplication of the terrain scars
2. New access roads for construction
3. Additional spur roads to regain access to existing private properties.

In this regard, it can be assumed that the existing property owners can continue to be served by the old road as at present. From a public policy standpoint, I doubt that these people will remain silent at losing their existing privacy and not be compensated by the use of the new road facility. Continued utilization of the old road for existing users, not served by the new road, would perpetuate existing scars and county maintenance costs.

In any case, a new road location means new additional scars to a great degree which, because of the very limited capability of the soils to renew growth, will be there for many years to come. As it noted here that along the old road very few of the old scars have received any ground cover although these scars are many years old.

A trial line was run using existing mapping on the old road location corridor to see if a new road to adequate standards could be constructed to destroy the old scars within the new roadway prism.

Plates II, Plan and III, Profile, show that this can be done to cover up or release for obliteration, approximately two-thirds of the old road. Those parts not covered or destroyed are best left alone for other reasons:

- a) At the lower end near Route 198, present real estate developments will need the old road for their purposes. This section of the old road also has the steepest grades.
- b) In the Atwell Grove area and Redwood Canyon area, the old road does not represent a scar but blends well with the existing terrain. To attempt to use these parts would cause destruction of Sequoia Groves needing preservation and elimination of quiet, shaded and pleasant drives through the Sequoias.
- c) Along the remainder of the route where sections of the old road are left, tourist sites for camping, picnicking, fishing and other recreational purposes would be nicely served away from the busier traffic flow.

The road shown on Plates II and III do meet the requirements of service to Mineral King as well as that proposed on new location by the State. This is



a first cut trial line developed from existing maps, aerial surveys and one field visit. With more adequate survey data, soils exploration, etc., a more adequate and improved alignment and profile would result.

The use of the old road corridor or modifications thereof, as shown in these exhibits, will preserve the Sequoias, will reduce the ultimate total scar and disruption of plant life, and will serve existing privately-held properties and construction operations with considerably less additional scar.

I strongly recommend that the State Highway Department expand its survey area and study lines in this corridor. Although full geologic data is not available, it is believed that the state should find this corridor less expensive than the one it has chosen.

Throughout the entire length of the two corridors studied - that proposed by the state and that proposed herein - landslides seem to be a prevalent geologic condition. While this is a relatively light rainfall region, occasional heavy storms and the annual spring snow thaw represent a hazard in this country. Evidence of slides is throughout the area. Further, I believe that a substantial amount of the geology of the proposed corridors is similar to that along the alignment of Route 198 in Three Rivers. Here, several slides have occurred in the few years this construction has been completed, which slides have been rather expensive to repair.

It was further noted that on the easterly side of the valley through which the road corridors are planned, it is believed that the dip of the ledge is adverse to construction; whereas, the use of the westerly side of the valley on which the old road was in part located, seems less hazardous to ledge slides due to dip direction. The old road location presents less length susceptible to this condition. This is from field views only. A geologic study should be made.

In either event, the use of heavy fills in susceptible slide country represents a definite construction hazard and one which can be substantially reduced by the use of bridge structures as proposed here in solution recommendation No. 11.

The use of the old road corridor, since a satisfactory line and grade can be obtained, offers several substantial economies: (1) because construction hazards should be reduced (2) substantially reduced requirements for construction access roads (3) reduced roads to service private properties if it is required to connect them with the new road.

No estimate of cost was made on this line and grade since it is believed that more detailed surveys than those available would be needed to develop even reasonable reconnaissance estimates. It is not believed that heavier cuts and fills or more expensive use of structures and cribbing would be encountered on this general location that that which will be encountered on the originally proposed line.

The scenic value of these mountains can be developed with equal ability on either line. The old road location adds the ability to utilize sections of the old road for scenic areas, picnic areas, fishing and quiet camping grounds.

If this is done, it is strongly recommended that the line and grade be developed in this corridor along the lines of design criteria given here in recommended method No. 11. These criteria would include:

1. Optimize the use of crib retaining walls using "rusting steel" for such work to reduce scars, reduce the length of box culverts for drainage purposes and reduce earthwork requirements.
2. Optimize the use of structures rather than earthwork. As shown herein, this should reduce construction costs as well as

scar and permit better cross movement of animals, plant life and visitors to this area.

#### Recommended Construction Method No. 11

Earthwork scars, which in this area are likely to be permanent, result in direct proportion to the amount of earthwork moved.

In this rough country because of the steepness of existing hillsides and the height of these lower mountainous areas, backslopes in cuts reach well up on the mountain sides before natural ground is again reached. Likewise, in fills, although the roadway surface is only 28 feet, the bottom of the embankment prism in many areas, approaches 800 and 1,000 feet using the  $1\frac{1}{2}$  on 1 slopes that the highway department recommends. If less stable material is encountered than will stand on  $1\frac{1}{2}$  to 1 safely, these fill and cut slopes will, of course, be larger and wider.

For the most part, the geology of this area indicates heavy rock excavation which should stand on a  $1\frac{1}{2}$  to 1 slope for embankments and remain on a  $\frac{3}{4}$  to 1 slope in cuts, but there will be some areas which will not, particularly in the disintegrated granite sections.

P. had

To study the comparative effects of a road in the National Park developed along the lines of earthwork versus such a line maximizing bridgework, a section of the State's proposed alignment from approximately Station 990 to approximately Station 1170 was selected. This is approximately 18,400 feet long (equation accounts for the difference).

The California Highway Department line and profile anticipates an earthwork solution for the entire length except for Redwood Creek where a 1,000-foot bridge is planned to avoid destruction of the Sequoia grove in this area. See Plate IV. This type of roadway design shows massive cuts and fills based on  $3/4$  to 1 back slopes and  $1\ 1/2$  to 1 embankment slopes.

Our study line between these two points is 17,750 feet in length. This difference in length develops a small economy in itself, but results in a somewhat smoother alignment which, in reducing curves, aids somewhat in traffic operations.

Within this 17,750 feet, all cuts and fills in excess of 40 feet are provided with cribbing 40 feet high when over 100, two rows of 40-foot high cribbing is used. It is recommended that "rusting steel" be used for this work which is somewhat more expensive than concrete, galvanized steel, or bonderized steel, but it will more nearly blend with the predominantly brown tones of the countryside. A price of \$8.00 per square foot for this cribbing has been estimated.

Cribbing, though expensive, is less expensive than masonry work and as in all walls or cribs, it reduces both the cost of earthwork and the length and cost of drainage structures through fill areas. See Plate VI. (Typical Section).

In order to measure the comparative costs of the two solutions in this test area, the following unit prices were used:

Excavation - (which is believed to be mostly ledge) from  
California Highway Department

\$1.10  
C.Y.

Total cost of roadway work including surfacing, guardrail, land-scaping, etc., -  $2.5 \times$  excavation cost. This is a normal relationship

where only normal drainage pipes, etc., are involved and is borne out by Kern County, California projects, the bid prices for which were supplied by the California Highway Department.

In the Sequoia case, due to large fills, relatively large drainage ditches, amount of tree-fall debris, etc., on mountain slopes and need to reduce water run-off concentration, it is estimated that \$3,500,000 is needed for major drainage box culverts or similar, based on estimates of \$150 to \$900 per linear foot of such structures with adequate waterway openings.

Bridge unit costs (from California Highway Dept.), (with interpretations)

Maximum Bent Height -

50 ft.	\$27.10
65 ft.	29.40
70 ft.	29.90
75 ft.	30.60
95 ft.	32.10
120 ft.	34.00
200 ft.	40.60

In the normal highway job, it is usual to anticipate that earthwork solutions will be cheaper than structural solutions.

In the case of mountain locations as in this area of the Sierras, this is not always true.

Extensive cutting and filling in mountainous areas is accompanied by extreme backslopes and embankment slopes to accomplish a stable earthwork condition. In the present case, embankments as much as 600 feet and 700 feet

wide at the bottom of the prism are required to hold up a mere 28 feet for highway width.

In such cases, the use of structures is sometimes warranted.

### Result

Our calculations indicate that in the case of this road (our study section of 18,400 feet is considered to be an average condition for the entire highway), the structural solution can be cheaper in initial construction cost and in annual maintenance cost.

#### California Proposed Design

Length:	18,400 feet	
Length of Bridges:	1,000 feet	
Excavation Quantity	2,307,000 cu. yds.	
Cost of Roadwork:	\$ 6,300,000	
Additional Cost of Major Drainage:	3,500,000	
Cost of 1 Bridge:	1,540,000	
Cost of Cribbing:	<u>\$ 4,000,000</u>	
Total Estimated Cost	15,340,000	\$15,340,000

#### Clarkson's Proposed Design

Length:	17,750 feet	
Length of 10 Bridges:	5,400 feet	
Excavation Quantity:	850,000 cu. yds.	
Cost of Roadwork	\$ 2,400,000	
Cost of Bridges:	7,000,000	

Additional Cost of Major Drainage:	\$	500,000	
Cost of Cribbing:		<u>1,900,000</u>	
Total Estimated Cost	\$	11,800,000	\$ 11,800,000

Although I believe that the structural costs of the bridges are high (a study of California's bridge costs for several years back and a study of large highway bridges in more remote areas of western Canada would indicate that these unit prices are high), there would still be a decided saving in the cost of the highway if the structural design method were used. This savings of almost \$4,000,000 in this test section would indicate a saving of several times this amount for this entire road.

#### Maintenance Costs

There are no authentic comparative costs for maintenance in any state. Maintenance accounting practices are a principal reason for this since resurfacing is maintenance in one area and is reconstruction in another. The difference is in degree of maintenance and in the efficiency of maintenance crews which cause wide variations in "maintenance costs."

Unless the bridges need repainting, and this can be avoided by the use of concrete or "rusting" steel, bridge maintenance costs are usually considerably lower than roadway maintenance costs on soil foundations in cuts and fills.

Snow and ice removal is generally equal per mile of road or bridge; maintenance of traffic services, signs, markings, etc., are the same. The maintenance of slopes, ditches, shoulders, surfaces on roadway sections, are high whereas bridge decks, bridge rails and bridge drainage items require little, if any, maintenance.



No figures are used here but it is believed quite firmly that annual maintenance costs will be reduced by optimizing on bridge sections rather than earthwork sections.

Our observations of existing cuts in this area, particularly in the disintegrated granite sections, indicate continued falling of material from cuts into drainage ditches and roadway which could increase the cost of roadway and ditch cleaning along this stretch of highway. The observed landslide condition likewise will be increased in earthwork areas. If the landscaping proposed is used on these slopes, maintenance of such planting will be a high-cost item.

While our study line and grade indicates 5,400 lineal feet of structures, this is only the first cut of a study. A more careful study with better survey data, geologic and soils data will, I believe, indicate increased economy through the use of a greater amount of such structures rather than a lesser amount. Particular attention should be given to further reducing cribbing and major drainage costs by the use of such structures.

#### Drainage Considerations

50-year flood criteria was used in determining the runoff for the major drainage structures. Because of the need for preserving existing plant ecology and to avoid excessive scour at outfalls due to over-concentration of drainage channels, relatively wide culvert sections were assumed.

Furthermore, due to the sensitivity of much of the plant life to excessive groundwater, minimal, if any, backwater conditions were permitted and because of the natural condition of tree fall and other wilderness debris conditions, it was

assumed that debris collection at the intake of major drainage structures would not be permitted or desired.

These restrictions would be normal for the park and other wilderness areas and is in line with the recommendations of R.J. Hartesveldt in his report on Atwell Grove and Redwood Creek Grove, dated December 19, 1966.

This would also be in keeping with the California Highway Department Design Manual. While energy dissipators may be required, it is better to reduce the amount and velocity of the runoff concentration than to depend too heavily on such dissipators.

#### Landscaping

The California State Highway Department expressed a willingness to materially reconstruct on scar areas natural plantings. This effort on their part should be encouraged. However, the art of highway landscaping does not lie primarily in expensive plantings to hide or otherwise "wallpaper" scars. It lies in the selection of location and design criteria which reduces scars and reduces the need for such plantings by leaving much of the original native growth intact.

It is for this reason that the use of structures and cribbing is recommended. Scars will be reduced by at least two-thirds by such techniques. This is particularly essential in these Sierra slopes. The surface cover necessary to support plant life is sparse, natural rainfall during many months is also sparse and retaining the natural vegetation which has conditioned itself to its environmental ecology is very important. It is particularly important here since one of the legislated reasons for this National Park is "to exemplify and maintain for posterity .... all other Sierran vegetation types present in the

paths..."

Some scars will be inevitable due to road construction but rather than exclude the public, it is possible with some care, to reduce the scars, preserve the native growth to a high degree, and still permit the intended transportation use by the public.

For the most part, the structures will be high above vegetation and should be designed to let in the necessary light and rainfall for its preservation. Heights of fifty feet and over, will permit this; however, heights of 15 to 30 feet will generally discourage plant life beneath the structures.

The construction specifications should be so drawn to reduce to a minimum the temporary scars due to construction operations. These restrictions are not abnormal and should be specified and enforced because of the slow rate at which nature will cover such temporary scar conditions.

This is another case where consideration of the amenities and ecology of the area can be done (first instance and ultimate), at a lower cost than solutions not recognizing these public functions and requirements.

#### Typical Section

I do not suggest a major change in the basic typical sections which are shown in Plate VI. These consist of a 28-foot wide surface on fills, with two to three-foot shoulders for guard rail etc., and for cut sections, 28 feet of pavement plus two twelve-foot shoulders. The bridges proposed are 38 feet out to out and approximately 32 feet roadway width.

I do object to the so-called safety lanes which are added to permit passing at various intervals.

At operating speeds of 40 and 50 miles per hour, neither the State's nor our alignment permits passing safely without these so-called safety lanes, for the 3 1/2 mile test section. At 30 m.p.h., either alignment permits passing sight distances: 15% of the length on the Clarkson line, and 5% of the length on the California line.

My hesitance in concurring in the safety lanes is due to their location as shown on the site plan and from past experience, my fear that at the end of each safety section, the numbers of vehicles which, when the restriction in width occurs, will be caught overriding the safety lane.

My observations on Route 198 from Visalia to Three Rivers on my visit to this area, confirms my past experience with this type of design. The safety lane design as proposed by California, is, in my opinion, very unsafe and should not be used.

Instead of the so-called safety lanes, it is suggested that periodic and frequent widened shoulders be provided for cars and other vehicles to pull over for scenic purposes and for the purpose of letting any vehicle queues pass.

This should be done on both sides of the road since vehicles traveling downgrade may not only wish to enjoy the scenery without crossing the road, but may have to stop to remove tire chains in the winter months. Many such locations should be available and were anticipated in the location studies. They should not be across from one another but staggered.

Regarding the entire design, our information is that the single directional peak hour flow is anticipated at 850 vehicles per hour. This is a very high one-directional load for a two-lane highway and can be handled only with reasonable traffic control. Further, if two-thirds of the 14,000 daily visitors

to the Mineral King area go in and out within one day, this will place a load of 9,400 visitors making the round trip in 2,500 vehicles. To keep the hourly peak to 850 per hour, only one-third of these can leave in any one hour. My own experience in visiting ski resorts in the east (New York and New Hampshire slopes) makes me wonder how much effective control this will require to stagger this load over several hours.

Our vehicle simulation studies indicate that this stretch of road, if designed with the indicated standards of alignment and grade, will effectively operate at 30 to 40 m.p.h. At 40 to 50 m.p.h., there will be insufficient passing opportunity for the faster and more impatient drivers. A restriction to 30 or 35 m.p.h. because of the beauty of the area, should not be onerous at least in daytime for this short length of trip.

There could be of course, considerable said about having the major parking lots at the Three Rivers end of the road just off Route 198. Transportation into the area will be cheaper and, depending upon the size of buses, the traffic load could be reduced to less than 100 vehicles per hour to relieve any operating congestion. Whether or not the capital cost to provide such parking and bussing operations would be less than the cost of garaging in Mineral King, should be studied. The lack of snow at the lower end of the road, and the substitution for passenger and gear handling at Route 198 in place of at Mineral King, may permit substantial savings, not only to the Mineral King visitor, but also to the construction at Mineral King.

Unless some control or other means is considered, this two-lane road does not look at all adequate for a 14,000-a-day visitor load where so many will be one-day visitors.

**(Exhibit Y duplicates Exhibit K and is omitted.)**



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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,  
*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States; JOHN S.  
 McLAUGHLIN, individually and as Superintendent  
 of Sequoia National Park; CLIFFORD M.  
 HARDIN, individually and as Secretary of Agri-  
 culture of the United States; J. W. DEINEMA,  
 individually, and as Regional Forester, Forest  
 Service, and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National Forest,  
*Defendants.*

CIVIL NO.

51464

**DEFENDANT'S AFFIDAVIT OF**

**RICHARD E. DEFFEBACH  
 DISTRICT ENGINEER, DISTRICT 6  
 DIVISION OF HIGHWAYS  
 DEPARTMENT OF PUBLIC WORKS  
 STATE OF CALIFORNIA**

**FILED BY DEFENDANTS IN OPPOSITION  
 TO PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**



CECIL F. POOLE  
 United States Attorney  
 PAUL E. LOCKE  
 Assistant United States Attorney  
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 Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,

*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States, et al.,

*Defendants.*

CIVIL NO.

51464

**AFFIDAVIT OF  
 RICHARD E.  
 DEFFEBACH**

State of California

County of Sacramento

ss

I, RICHARD E. DEFFEBACH, the undersigned, being duly sworn, depose and say:

1. That I am now, and have been since July 1, 1966, the District Engineer for District 6 of the Division of Highways, Department of Public Works, State of California, and that said District 6 is the district within which proposed State Highway Route 276 between Three Rivers and Mineral King, California, would be constructed.

2. That as said District Engineer I am responsible for the planning, design, right-of-way acquisition, construction, operation, and maintenance of all state highways within said

District, and that as part of said responsibility I have been since July 1, 1966, in charge of all aspects of the planning and design of said Route 276.

3. That in connection with the construction of the Mineral King recreation project on National Forest land, it is necessary to construct an all-year access highway over lands between State Highway Route 198 from near Three Rivers over to Mineral King, California. That in 1965 the California Legislature added State Highway Route 276 to the State Highway System in order to provide such access.

4. That the California Highway Commission has authorized the construction of such highway, and has approved a program providing funds for right-of-way acquisition and construction. That said Commission has included in its 1969-70 fiscal year budget the sum of 1.8 million dollars for construction of the first unit of this highway project.

5. That the current estimated total cost of said highway project is 25 million dollars, 22 million dollars of which will come from state highway funds and the remaining 3 million dollars of which would come from the Economic Development Administration, an agency of the United States Department of Commerce.

6. That on August 10, 1967, a public hearing was held at Three Rivers, California, by said Division of Highways on the subject of the proposed location of said highway. That on October 24, 1967, the California Highway Commission formally adopted the location of said highway.

7. That said highway, according to said adopted location, would be approximately 20.4 miles long, of which 6.5 miles would traverse Bureau of Land Management lands, 9.2 miles would traverse Sequoia National Park lands, 1.8 miles would traverse Sequoia National Forest lands, and the remaining 2.9 miles would traverse various parcels of private property.

8. That after October 24, 1967, said Division of

Highways commenced the design of said highway. That preliminary plans have been completed for those portions of said highway traversing Bureau of Land Management lands and Sequoia National Forest lands. That preliminary plans for those portions of said highway traversing Sequoia National Park land have not been completed because the National Park Service has not allowed access to said Division of Highways for the carrying out of the seismic investigations necessary to the completion of said preliminary plans. That until a special use permit is issued by the National Park Service for the construction of said highway over Sequoia National Park lands, said Division of Highways will be unable to conduct said seismic investigations and complete said preliminary plans. That as of this date said special use permit has not been issued.

9. That neither said seismic investigations nor any other investigations or actions of said Division of Highways prior to the actual construction of said highway will result in any damage to land or timber growing thereon.

10. That to date said Division of Highways has expended in excess of \$600,000 in the planning and design of said highway.

11. That from the date of issuance of said special use permit by the National Park Service, it would take said Division of Highways a minimum of five months to develop preliminary plans for the portion of said highway over Sequoia National Park lands and transmit them to the National Park Service for consideration. That until thereafter there is substantial agreement between said Division of Highways, the National Park Service, the Bureau of Land Management, and the Forest Service on the design of the entire length of said highway, said Division of Highways will not call for construction bids on any portion of said highway.

12. That because of the time necessary to complete design and acquire the necessary rights-of-way and that because the calling for construction bids will not commence until the snow

has melted over the construction area to the point where prospective bidders can examine the construction area, the earliest date for the calling for construction bids on any portion of said highway is approximately May 1, 1970.

13. That the submission of construction bids, award of contract, execution of the necessary contract documents, and mobilization of the contractor's equipment and personnel will require at least two months after said call for bids, so that the earliest date upon which construction of any portion of said highway could commence is approximately July 1, 1970.

14. That the dates set forth in paragraphs 12 and 13 rest upon the assumption that said special use permit from the National Park Service will be issued not later than September 15, 1969. That if the issuance of said special use permit is delayed by order of the court in this action beyond September 15, 1969, the commencement of construction of the first unit of said highway will be delayed a minimum of six months. That any delay in the commencement of said construction will subject said Division of Highways to increases in construction costs at a rate of from three to five percent per annum, and expose said Division of Highways to the risk of losing the said contribution of three million dollars from the Economic Development Administration.

RICHARD E. DEFFEBACH  
RICHARD E. DEFFEBACH

Subscribed and sworn to  
before me this 24th day  
of June, 1969.

ANNA YOUNG  
NOTARY PUBLIC  
COUNTY OF SACRAMENTO  
My commission expires Mar. 4, 1973

CECIL F. POOLE  
United States Attorney  
PAUL E. LOCKE  
Assistant United States Attorney  
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
of the Interior of the United States; JOHN S.  
McLAUGHLIN, individually and as Superintend-  
ent of Sequoia National Park; CLIFFORD M.  
HARDIN, individually and as Secretary of Agri-  
culture of the United States; J. W. DEINEMA,  
individually, and as Regional Forester, Forest  
Service, and M. R. JAMES, individually, and as  
Forest Supervisor of the Sequoia National Forest,  
*Defendants.*

CIVIL NO.

51464

**DEFENDANT'S AFFIDAVIT OF**

**W. S. DAVIS  
ASSISTANT REGIONAL FORESTER  
CHIEF OF DIVISION OF RECREATION  
CALIFORNIA REGION  
FOREST SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE**

**FILED BY DEFENDANTS IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**



**CECIL F. POOLE**  
 United States Attorney  
**PAUL E. LOCKE**  
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*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States, et al.

*Defendants.*

CIVIL NO. 51464

**AFFIDAVIT OF  
 W. S. DAVIS**

State of California

City and County of San Francisco

ss

I, W. S. DAVIS, being first duly sworn, depose and say:

1. I now am, and have been since 1958, an Assistant Regional Forester for the California Region of the Forest Service, United States Department of Agriculture, and Chief of the Division of Recreation for said California Region. In that capacity I have been since said date and now am the principal adviser of the Regional Forester for said California Region on all recreation matters in said region, including the Mineral King project, which is the subject of this action.

2. I have been intimately involved in all phases of the planning and implementation of the Mineral King project continuously since 1960, and am fully informed as to its current status and as to the future plans of the Forest Service with respect thereto.

3. In February 1965, the Forest Service published a prospectus inviting interested parties to submit proposals for the development of an all-year recreational project in Mineral King Valley, on the Sequoia National Forest, in accordance with certain minimum requirements set forth in said prospectus.

4. Walt Disney Productions (hereinafter referred to as "Disney") and five other bidders submitted proposals in response to said prospectus. After careful study, the Secretary of Agriculture declared the Disney proposal to be the best. Thereafter, on January 10, 1966, a planning special use permit was issued to Disney by the Forest Service for a term of three years in order that Disney might carry out the necessary surveys, investigations, and studies in order to prepare a master plan for development of the project which would meet with Forest Service approval. A true copy thereof is attached hereto as Exhibit A.

5. Disney thereafter carried out such surveys, investigations, and studies, and prepared a master plan, which was duly approved by the Forest Service on January 21, 1969.

6. Said three-year planning permit to Disney provides for the subsequent issuance of a 30-year term permit to Disney upon the meeting of certain requirements, as set forth in Clause 17 of said planning permit, reading as follows:

"17. A 30-year term special use permit covering not to exceed 80 acres, and a supplemental terminable area special use permit, will be issued to the permittee upon the completion of the following requirements.:

(a) Approval by the Regional Forester of plans which meet or exceed the minimum requirements of the



Mineral King prospectus of February 1965, which is on file in the Supervisor's Office.

- (b) Award of the first contract within three years of the date of issuance of this permit for improving, to public winter access standard, the authorized State route from the vicinity of Hammond, California, to Mineral King, this contract to cover a significant portion of said road.
- (c) Programming of funds for completion of said road to public winter access standards within five years of the award of the first road contract.

The term permit will not be issued unless all three of the above requirements are met.

- 18. This permit will automatically terminate with the issuance of the permits described in Clause 17, and will in any event terminate three years from the date of issuance."

7. That on or about April 15, 1968, Clause 17(b) of said permit was amended to read as follows:

"Award of the first contract by September 1, 1969, for improving, to public winter access standard, the authorized state route from the vicinity of Hammond, California to Mineral King, this contract to cover a significant portion of said road."

8. That on or about July 3, 1968, Clause 18 of said permit was amended to read as follows:

"This permit will automatically terminate with the issuance of the permits described in Clause 17 (and as amended in Special Use Amendment No. 2, April 15, 1968), and will in any event terminate by September 2, 1969."

9. That on or about June 24, 1969, Clauses 17(b) and 18 were amended to read as follows:

"17(b) Award of the first contract by September 1, 1971, or ninety (90) days after the expiration of any

preliminary injunction ordered by the Court as a result (*Sierra Club v. Hickel, et al.*), United States District Court, Northern District of California, Civil Action No. 51464, whichever is later for improving to public winter access standards the authorized State route from the vicinity of Hammond, California, to Mineral King, this contract to cover a significant portion of said road.

- "18. This permit will automatically terminate with the issuance of the permit described in Clause No. 17 (as amended hereby) and will in any event terminate on September 2, 1971, or ninety (90) days after the expiration of any preliminary injunction ordered by the Court as a result of (*Sierra Club v. Hickel, et al.*), United States District Court, Northern District of California, Civil Action No. 51464, which ever is later."

10. That I have been advised by the Division of Highways of the State of California that the first contract for construction of a significant portion of the Mineral King Highway will not be let until after May 1, 1970, and shortly before July 1, 1970. Accordingly, pursuant to the terms of the planning permit amended as indicated above, the 30-year term permit to Disney will not be issued by the Forest Service before approximately July 1, 1970.

11. That prior to the issuance of said 30-year term permit, the Forest Service will not permit Disney to commence any construction activities in connection with the Mineral King project, nor will it permit Disney to conduct any activity which would be detrimental to national forest lands and resources.

12. That in connection with the implementation of the Mineral King recreational project, the Forest Service has found it necessary to conduct, is conducting, and must continue to conduct, detailed surveys and studies to determine the basis upon which various aspects of the final construction plans and specifications to be prepared for the Disney project, will be approved. That in conducting these surveys and studies, the Forest Service has not and will not take any actions which will

be detrimental to national forest lands and resources. That if the Forest Service is restrained by preliminary injunction from continuing these surveys and studies, the date of completion of the Mineral King project will be delayed for a period approximately equal to the period during which the Forest Service is restrained from carrying on these surveys and investigations.


13. That in the first year of operation of the Mineral King project, which is now scheduled to open in December 1973, the United States expects to receive from Disney as an annual permit fee a sum estimated to be in excess of \$75,000. In the second and succeeding years of operations, the United States expects to receive from Disney as an annual permit fee a sum estimated to be in excess of \$100,000. If the completion of the project is delayed by issuance of a preliminary injunction, the United States will be correspondingly delayed in the receipt of said annual fees and will suffer a substantial financial loss to that extent.

14. That the proposed recreational development at Mineral King is not unique in combining a 30-year term permit for an aggregate acreage not to exceed the statutory limitation of eighty acres with terminable permits (for which there is no statutory acreage limitation). There are now in the United States a total of at least 84 recreational developments on national forest lands in which there is such a combination of a 30-year term permit and terminable permits, and at least 15 of these are in the California Region of the Forest Service.

W. S. DAVIS  
W. S. DAVIS

Subscribed and sworn to before me  
this 25th day of June, 1969.

C. COWNE  
Deputy Clerk  
United States District Court  
Northern District of California

 <b>SPECIAL USE PERMIT</b> Act of June 4, 1897, or February 15, 1901 This permit is revocable and nontransferable		NAME OF PERMITTEE <b>Walt Disney Productions</b>	KIND OF USE <b>Winter Sports (Survey)</b>
		DATE OF PERMIT <b>January 10, 1955</b>	FILE CODE <b>2710</b>
REGION <b>5</b>	STATE <b>California</b>	FOREST <b>Sequoia</b>	NEAREST DISTRICT <b>Tule River</b>

Permission is hereby granted to Walt Disney Productions, a corporation,  
 of 500 South Buena Vista Street, Burbank, California  
 hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

National Forest land at the headwaters of the East Fork of the Tule River, commonly known as the Mineral King area, in the Sequoia National Forest (T. 17 S., R. 31 E., E3300)

This permit covers (as needed) acres and/or                      miles and is issued for the purpose of:

Making detailed surveys and plans for the development of a winter and summer recreation development meeting the minimum requirements of the Mineral King Prospectus of February, 1955.

The exercise of any of the privileges granted hereby constitutes acceptance of all the conditions of this permit.

eight hundred thirty-three and 37/100

1. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of Twenty-three thousand Dollars (\$ 23,833.37 ) for the period from February 1, 1955, to December 31, 1955, and thereafter annually on January 1 1956 and 1957 and 1958 Dollars (\$ 23,833.37 ):

This payment is not subject to refund. However, each year \$25,000.00 of the annual sum applies on a carry-forward basis as a credit for fees due in future years under the conditions of the term permit if issued as specified in Rev. 1-13 17.

EXHIBIT

A

under this permit shall begin within \_\_\_\_\_ month, and shall be completed within \_\_\_\_\_ months, from the date of the permit. The permit shall be actually exercised at least \_\_\_\_\_ days each year, unless otherwise authorized in writing.

The Forest Officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraised value; provided that the Forest Service reserves the right to dispose of the merchantable timber in other than the permittee at no damage cost to the permittee.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge. Any approved survey maps

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fire during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privileges granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or annulment of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable.

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

15. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses will control.

16. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

17. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

18. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

19. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

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26. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

27. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

28. This permit is accepted subject to the conditions set forth above and to conditions \_\_\_\_\_ to

attached hereto and made a part of this permit.

DATE January 10, 1936

SIGNATURE OF PERMITTEE R. M. McKnight

TITLE Forest Supervisor

US 21-11

17. A 30-year term special use permit covering not to exceed 80 acres, and a supplemental terminable area special use permit, will be issued to the permittee upon the completion of the following requirements:

- (a) Approval by the Regional Forester of plans which meet or exceed the minimum requirements of the Mineral King Prospectus of February 1963, which is on file in the Supervisor's Office.
- (b) Award of the first contract within three years of the date of issuance of this permit for improving, to public winter access standard, the authorized State route from the vicinity of Hammond, California, to Mineral King, this contract to cover a significant portion of said road.
- (c) Programming of funds for completion of said road to public winter access standards within five years of the award of the first road contract.

The term permit will not be issued unless all three of the above requirements are met.

- 18. This permit will automatically terminate with the issuance of the permits described in Clause 17, and will in any event terminate three years from the date of issuance.
- 19. This permit shall have no force or effect until it has been signed by the permittee and the Forest Service.

WALT DISNEY PRODUCTIONS, a CORPORATION

Jan H. LL  
Date

By

Ray D. Pincus  
President

[Corporate Seal]

Luther R. Man  
Secretary

I, Luther R. May, certify that I am the Secretary of the Corporation that executed the above permit; that Ray D. Gandy, who signed said permit on behalf of said corporation, was then President of said corporation; that I knew his signature, and that his signature on said permit is genuine; and that said permit was duly signed, sealed, and attested to for and on behalf of said corporation by authority of its governing body.

[CORPORATE SEAL]

Luther R. May  
Secretary



CECIL F. POOLE  
 United States Attorney  
 PAUL E. LOCKE  
 Assistant United States Attorney  
 Federal Building, Box 36055  
 450 Golden Gate Avenue  
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Attorneys for Defendants

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vs.

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 individually, and as Regional Forester, Forest  
 Service, and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National Forest,  
*Defendants.*

CIVIL NO.

51464

**DEFENDANT'S AFFIDAVIT OF**

**DONN B. TATUM  
 PRESIDENT  
 WALT DISNEY PRODUCTIONS**

**FILED BY DEFENDANTS IN OPPOSITION  
 TO PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**

CECIL F. POOLE  
 United States Attorney  
 PAUL E. LOCKE  
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UNITED STATES DISTRICT COURT  
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 of the Interior of the United States, et al.,

*Defendants.*

CIVIL NO.

51464

AFFIDAVIT OF  
 DONN B.  
 TATUM

State of California

County of Los Angeles

ss

I, DONN B. TATUM, being duly sworn, depose and say:

1. I am President of Walt Disney Productions, a California corporation (hereinafter called "Disney"). Since February, 1965, when the United States Forest Service issued a prospectus inviting bids for the development of an all-year recreational area at Mineral King in the Sequoia National Forest, I have served Disney in the capacities of Vice President and Administrative Assistant to the President, Executive Vice President-Administration and President. Throughout this time I have

worked closely with the members of our staff in the development of our initial proposal and subsequent master plan and in the administration of this project. In performing these duties, I have gained a thorough knowledge of the Mineral King project.

2. In March, 1965, Disney received from the United States Forest Service a publicly announced prospectus, inviting interested persons to bid for the development of an all-year recreational facility at Mineral King in the High Sierra. Disney responded to this prospectus by initiating research and planning efforts leading to the submission of a proposal to the Forest Service on August 31, 1965. Five other organizations submitted proposals.

3. In preparing its preliminary proposal for presentation on August 31, 1965, Disney initiated extensive studies of the development site, surveyed existing research data on the area, and contracted for extensive additional studies from outside consultants.

4. On January 10, 1966, Secretary of Agriculture Orville Freeman announced that Disney was the successful applicant, and the United States Forest Service granted a three-year preliminary planning permit, which has since been extended. The permit specified the planning period as a time to: 1) obtain commitments for construction of an all-year access road to Mineral King; 2) make on-site studies; and 3) further refine and obtain approval of the developmental master plan.

5. During the term of the three-year preliminary planning permit, Disney initiated additional detailed studies and surveys leading to the preparation of its master plan for the development. A Disney snow survey team has lived at Mineral King during each winter season since 1966 observing snow conditions, recording temperatures, wind conditions, stream flow, snow depths, snowfall and snow drifting patterns, and mapping avalanche activity.

6. Disney has also obtained from highly respected

independent consultants and planners: reports on ski area and resort planning; low and high altitude vertical photography and topographic mapping of Mineral King; detailed data on various rock and soil types, and geological conditions in the Village and proposed parking area; studies on sanitation, waste disposal, water systems, meteorology and avalanche control; studies on transportation systems to bar automobile traffic from the Mineral King Valley; and other substantial research and planning reports.

7. All of the information obtained through such continuing studies was then analyzed by the architectural and engineering staff of Disney's subsidiary, WED Enterprises, Inc., in Glendale, California. WED Enterprises expended substantial sums of money in the further development of the master plan for this project.

8. The master plan was submitted to the United States Forest Service for final approval on January 8, 1969. Notification of formal approval of this master plan was received by Walt Disney Productions on January 21, 1969, and announced by the United States Forest Service at press conferences in Los Angeles and San Francisco on January 27, 1969. From January 10th, 1966, through the time of approval of the master plan and up to the present date, Disney's planning has been performed under the constant supervision and review of officials of the United States Forest Service.

9. Under the supervision of the United States Forest Service, continuing studies will be carried out up to and during the construction phase of this project, in order further to enhance Disney's ability to serve the public need through this development.

10. In connection with the preparation of the master plan Disney has incurred in excess of three quarters of a million dollars in direct costs for necessary research and creative efforts.

11. Disney has met all of its obligations under the terms of

the preliminary planning permit granted January 10, 1966, as amended.

12. Upon final approval of the necessary right-of-way, and award by the State of California Department of Public Works of the first construction contract for a significant portion of the access road from Hammond, California, to Mineral King, the Forest Service has agreed to grant a thirty-year term permit, under which Disney will construct the permanent facilities related to this development. I am informed that construction under such contract will not commence before July 1, 1970.

13. As Disney has met all of its obligations under the terms of the preliminary planning permit now in effect, it does not intend to initiate substantial additional on-site activities until after it has been awarded the thirty-year term permit.

14. The facilities to be constructed by Disney are planned for completion contemporaneously with the completion of construction for the new all-weather access road. As currently programmed, this road is planned for completion by October, 1973. Therefore, Disney now contemplates that its construction program will be begun during the summer season of 1971 and will grow to peak activity during the summers of 1972 and 1973. In any case, no activity is contemplated by Disney which would result in any alteration whatsoever of the natural character of Mineral King until the summer of 1971, two years hence.

15. The preliminary injunction being sought in this action would injure Disney in the following manner:

a) Such an injunction would prevent the responsible Federal and State authorities from completing the administrative planning, review and action necessary to prepare for and let the first contract for construction of the all-weather access road. These steps include approval by the National Park Service of the necessary right-of-way agreement for that portion of the access road which crosses Sequoia National Park; approval of similar right-of-way agreements for those portions of the road which cross lands administered by the Bureau of Land Management

and the United States Forest Service; acquisition by the State of California of various parcels of private property affected by the proposed access route; completion by the State of California of necessary design work; and preparation of the specifications for the initial construction contract and letting said contract. These administrative actions, which will in no way alter the character of the landscape in the Sequoia National Park or the Sequoia National Forest, must be completed before Disney is granted its thirty-year term permit.

b) Disney intends continuously to review and improve the master plan for the development of Mineral King up to and through the construction period. The injunction sought would prevent any government officials from consulting with Disney or reviewing and commenting on Disney's proposals for improvement of the master plan, thus effectively preventing Disney from refining and improving plans for the Mineral King development.

c) Delay resulting from an injunction could force Disney to defer its schedule for constructing this badly needed recreational facility, resulting in substantial financial injury to Disney through additional administrative expenses, increased construction costs, reprogramming of personnel requirements and disruption of corporate financial affairs.

DONN B. TATUM  
DONN B. TATUM

Subscribed and sworn to  
before me this 26th day  
of June, 1969.

DIANE USHER  
OFFICIAL SEAL  
DIANE USHER  
NOTARY PUBLIC-CALIFORNIA  
PRINCIPAL OFFICE IN  
LOS ANGELES COUNTY

My Commission Expires July 10, 1970

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,

*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States; JOHN S.  
 McLAUGHLIN, individually and as Superintendent  
 of Sequoia National Park; CLIFFORD M.  
 HARDIN, individually and as Secretary of Agri-  
 culture of the United States; J. W. DEINEMA,  
 individually, and as Regional Forester, Forest  
 Service, and M. R. JAMES, individually, and as  
 Forest Supervisor of the Sequoia National Forest,

*Defendants.*

CIVIL NO.

51464

**DEFENDANT'S AFFIDAVIT OF**

**JOHN S. McLAUGHLIN  
 SUPERINTENDENT OF SEQUOIA NATIONAL PARK  
 NATIONAL PARK SERVICE  
 UNITED STATES DEPARTMENT OF INTERIOR**

**FILED BY DEFENDANTS IN OPPOSITION  
 TO PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**



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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,

*Plaintiff,*

vs.

WALTER J. HICKEL,

*Defendants.*

CIVIL NO.

51464

**AFFIDAVIT OF  
 JOHN S.  
 McLAUGHLIN**

State of California  
 City and  
 County of San Francisco

ss

I, JOHN S. McLAUGHLIN, being duly sworn, depose and say:

1. That I am now and have been since October 1967 the Superintendent of Sequoia and Kings Canyon National Parks, National Park Service, United States Department of Interior.

2. That in my capacity as Superintendent of said National Parks I am familiar with the proposed Mineral King recreational development.

3. That in connection with the said development, it is planned that an all-year access highway over 9.2 miles of the land in the Sequoia National Park will be constructed and maintained by the Division of Highways, Department of Public

Works, State of California.

4. That the Secretary of Interior on November 19, 1968, approved the construction of said two-lane all-year access road through the Sequoia National Park, subject to precise on-the-ground location and construction standards that will protect the National Park values.

5. That the general plans and design approved for the construction of the two-lane all-year access road will be engineered so that there will be a minimum impact on the National Park values. The alignment of the road will be carefully selected to protect the Sequoia trees, natural areas, existing drainage ways, and the over-all ecology of the area.

6. In connection with said proposed construction, a permit, which will insure maximum protection of National Park values, is proposed to be issued to the State of California to provide the necessary rights of way for said construction.

7. That preliminary work incident to the further planning of said road and prior to the commencement of actual road construction will result in only minimal disturbances of the terrain and forest cover in Sequoia National Park.

JOHN S. McLAUGHLIN  
JOHN S. McLAUGHLIN

Subscribed and sworn to before me  
this 27th day of June, 1969.

C. COWNE

Deputy Clerk  
United States District Court  
Northern District of California

FELDMAN, WALDMAN & KLINE  
 LEO E. BORREGARD  
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, a non-profit California corporation,

*Plaintiff,*

vs.

WALTER J. HICKEL, et al.,

*Defendants.*

CIVIL ACTION

51464

AFFIDAVIT OF  
 MATTHEW P.  
 MITCHELL IN  
 SUPPORT OF  
 MOTION FOR  
 PRELIMINARY  
 INJUNCTION

MATTHEW P. MITCHELL, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the above Court, and one of the attorneys for plaintiffs in this suit.

2. On June 24, 1969, I met with Rodney Hamblin, an attorney in the United States Attorney's office in this District, in connection with this suit. I asked Mr. Hamblin for assurance that permits to Walt Disney Productions, Inc. for a development in the Mineral King Valley and to the Division of Highways of the State of California for the construction of a road through

Sequoia National Park would not be issued pending resolution of plaintiff's motion for a preliminary injunction herein. He stated that he could not give such assurance.

3. During the course of that conversation, Mr. Hamblin stated, *inter alia* that he had been asked by the defendants herein whether to proceed with their plans and issuance of permits for the Mineral King development and the Sequoia Park road, shortly after they had been served with process in this suit. He said that he had advised that since there was no preliminary injunction or temporary restraining order in effect, the defendants could proceed on a "business as usual" basis.

4. During the course of my conversation with Mr. Hamblin, we went from the corridor of the Federal Building to Mr. Hamblin's office, where he placed several telephone calls to determine the status of the permits in question. I heard only his side of the conversations during the calls, but he informed me of their content in substance as follows:

(a) That a permit for the road through Sequoia Park, apparently in "final form" was on the desk of a Mr. Bowen of the National Park Service, and that it had been contemplated that a Mr. Hartzog, head of the National Park Service would come to California on that day (June 24) to work out certain final details with the California Division of Highways, and that when those details were settled, the permit would be signed;

(b) That Mr. Hartzog had postponed his trip and would apparently not be coming to California to finalize the permit until after the weekend of July 4, 1969, but he did not know Mr. Hartzog's plans.

5. I have never seen a copy of the permit proposed to be issued to the California Division of Highways by Secretary Hickel or his agents and to my knowledge no attorney for the Sierra Club and no official of the Sierra Club has seen a copy of that permit. I understand it to be an unconditional permit

purporting to authorize construction of a road across Sequoia National Park.

DATED: June 30, 1969.

MATTHEW P. MITCHELL  
MATTHEW P. MITCHELL

Subscribed and sworn to before me  
this 30th day of June, 1969.

HALLIE KELLER  
NOTARY PUBLIC IN AND FOR  
THE STATE OF CALIFORNIA

My Commission Expires Nov 17, 1969

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United States District Court  
Northern District of California

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No. 51,464

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Sierra Club, a non-profit California  
corporation,

Plaintiff,

vs.

Walter J. Hickel, et al.,

Defendants.

MEMORANDUM OF DECISION

SWEIGERT, J.

The Forest Service, Department of Agriculture intends to issue certain permits to Walt Disney Productions, Inc., a private corporation, for the construction and maintenance of a private hotel-resort, winter-summer complex in the Sequoia National Forest known as Mineral King.

The permits will cover in excess of 1,000 acres of land and, according to plaintiff, will ultimately affect as much as 13,000 acres. It is estimated that the project will involve as high as 35 million dollars of private investment.

Mineral King, since 1926, has been, not only a national forest under the jurisdiction of the Forest Service, Department of Agriculture, but also a national game refuge by special designation of the Congress (26 Stat. Chap. 744).

The permits are to be issued as soon as construction contracts are executed by the State of California for the construction of a substantial segment of a proposed public highway through the adjoining Sequoia National Park which is under the jurisdiction of the National Park Service, Department of the Interior.

The National Park Service intends to issue to the Division of Highways, State of California, a permit for the construction of a new all-weather, high-speed highway, estimated to accommodate 1200 vehicles per hour each way, through the Sequoia National Park as the most economically feasible means of providing motorist highway connection between the California highway system and the proposed Mineral King hotel-resort project which is located, not within the national park, *but* in the adjoining national forest game refuge.

The case is presently before the court on plaintiff's application for a preliminary injunction restraining the defendant federal agencies from issuing the permits in question.

#### *The Forest Service Permits for the Resort-Hotel Project*

The permits about to be issued by the Forest Service will, in effect, enable the Developer to construct and maintain a winter-summer, hotel-resort project which, including its "elbow room" for related facilities, will comprise admittedly over 1,000 acres and, as claimed by petitioner, may affect 13,000 acres of forest-game refuge land.

This is to be accomplished by the device of using two kinds of permits: (1) a 30 year-80 acre "term" permit for "most of the major facilities," and (2) a separate



so-called "revocable" permit covering an additional 1,000 acres for "other major facilities, e.g., ski lifts, towers, refuse and sewer disposal, parking areas and roads" for use in conjunction with the resort covered by the 30 year-80 acre term permit.

Title 16 U.S.C. § 497 provides, as far as applicable here, that the Secretary of Agriculture is authorized "to permit the use and occupancy of suitable areas of land within the national forest, *not exceeding 80 acres*, and for periods not exceeding 30 years, for the purpose of constructing or maintaining hotels, resorts or other structures or facilities necessary or desirable for recreation, public convenience and safety." (emphasis added)

The section makes similar provision for industrial and commercial purposes related to or consistent with other national forest uses; also similar provisions for state agency public uses; also similar provision for summer homes and stores, except that in this latter case the acreage limitation is 5 acres.

The legislative history of Section 497, first adopted in 1915, amended in 1948 and broadened to its present form in 1956, indicates quite clearly that, although its purpose has been to grant the Secretary of Agriculture power to issue *term* permits for certain kinds of specified uses, its purpose has been also, and equally important, to restrict term permits for those uses *timewise*, i.e., 30 years for any use, and *areawise* to 5 acres for summer homes and stores, and (since 1956) 80 acres for the uses specified in the kind of usage here involved, i.e., hotels, resorts and other structures or facilities necessary or desirable for recreation, public convenience or safety.

It is also clear from the legislative history that the 80 acre limitation on hotels and resorts was intended to include, not only the resort or hotel, itself, but also any and all structures or facilities related to it, e.g., "elbow room" for ski lifts and other related service facilities. See, 1948 *U.S. Code Cong. & Ad. News*, pp. 1337-1338; 1956 *U.S. Code Cong. & Ad. News*, pp. 3334-3336.\*

It is also clear from the legislative history that in 1948 Congress refused to broaden (except for Alaska), the pre-existing 5 acre limitation for any permit for any purpose and did *not*, in fact, enlarge the acreage provision from 5 to 80 acres with respect to resort-hotel use of forest land in the United States until 1956 upon the representation that the requirements of commerce, industry, recreation and public use of space in the national forests had substantially changed. (See, 1958 *U.S. Code Cong. & Ad. News*, p. 3336).

It is also clear from the legislative history that in 1956 the Secretary represented to the Congress that his authority to issue "revocable" permits was adequate only "for uses for which long term tenure is unnecessary or *undesirable*." (*U. S. Code Cong. & Ad. News*, p. 3636).

The question arises whether this dual permit device is intended to circumvent the clear 80 acre limitation of Section 497 and thereby accomplish what would be in effect a violation of the section.

It will be noted that Section 497, which imposes the 80 acre limitation, does not differentiate between different

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\*See Defendants' Responding Brief of 7/14/69, attachment No. 1 at p. 3, Letter of 8/5/55, Acting Secretary of Agriculture to Chairman, Senate Committee on Agriculture and Forestry.

kinds of permits. It broadly refers to any "permit" for the specified uses.

So far as so-called "revocable" permits are concerned, Congress has never expressly authorized them. Agriculture claims authorization for them only under its general power to so regulate the forest lands as "to preserve the forests thereon from destruction" (16 U.S.C. § 551) and under an Attorney General's Opinion of 1928. (35 Op. A.G. 485 [11/27/28]).

That opinion, while recognizing an implied power to issue them, narrowly restrict their use to situations in which such a permit is (1) made expressly revocable at will by its terms, and (2) the permitted structures are capable of being removed in case of revocation, and (3) the permitted use will not permanently damage or destroy the land for government use, and (4) the permitted use will be of direct benefit to the United States.

It is questionable whether the so-called "revocable" permits to be used by Agriculture in the present case meet the strict standards prescribed by the Attorney General.

In the first place they are not by their terms expressly made terminable "at will." Clause 15 merely provides that "This permit may be terminated upon breach of any of the conditions herein *or at the discretion* of the Regional Forester or the Chief of the Forest Service." (emphasis added)

Any such revocation is made subject to administrative appeal under Agriculture's own regulations. (36 CFR 211.20-211.119). Also, the Forest Service Manual (FSM

2711.2-5; 10/68), while stating that these permits are "generally for use of short duration," adds that "They will be limited to the time actually needed for exercising the use privileges."

These provisions strongly suggest to the Developer that the so-called "revocable" permit is not really revocable "at will" and that any discretionary revocation thereof must be reasonable in the light of all the circumstances, including the time actually needed for exercising the use privileges covered thereby—use privileges which in the present case are so coupled with the 30 year term permit that the time actually needed for exercising them would obviously be at least 30 years.

Clause 11 provides that "Upon abandonment, termination or revocation or cancellation of this permit the permittee shall remove within a reasonable time all structures and improvements . . . and shall restore the site unless otherwise agreed upon in writing or in this permit. . . ." There is no requirement that the structures shall in fact be capable of such removal or that the use will not be in fact such as to permanently destroy or damage the land for government use.

Further, the uses granted to the Developer by the two purportedly separate permits admittedly relate to a single, unified project and are obviously interlocked and inter-related.

It is inconceivable that Agriculture would, or could under the terms of the "revocable" permit and the circumstances of its issuance, suddenly and "at will" require the Developer to remove ski lifts, towers, refuse and

sewage disposal, parking areas and roads covered by that permit and thus effectively destroy the 35 million dollar investment made by the Developer under his 30 year-80 acre term permit.

The very opinion of the Attorney General relied on by Agriculture warns of just such a possible danger to the public interest in granting revocable permits, saying: "In cases where it appears that the permittee intends to make substantial improvements the removal of which would cause him a great loss in case of revocation of the permit, it is a matter of departmental policy whether a situation should be created by the issue of a permit which may afterwards embarrass the head of the department in the exercise of the powers of revocation."

For the foregoing reasons we conclude that the proposal of Agriculture in the pending case, if carried out, may involve a violation not only of the letter, but also the purpose and intent of Section 497 so far as its 80 acre limitation is concerned.

To hold otherwise would be to assume that the Congress when enacting and amending this acreage limitation, contemplated that it could be circumvented, even nullified, by the device of coupling two different kinds of permits for a single, unified, private hotel-resort development, occupying more than 1,000 acres of a forest game refuge area. If Congress had any such situation in mind, it could have spared itself time and trouble by omitting any area limitation—or by otherwise indicating its intent. Certainly Congress could not have been so naive as to think that "revocable" permits, issued under such circumstances, would *really* be revocable.

*National Park Service—Permit for the Highway*

Interior proposes to issue to the Division of Highways, State of California, a permit for the construction of a highway *through* the National Park to connect the California Highway system with the Mineral King development, which is located, not within the Park, but outside of it in the national forest game refuge area.

Interior is entrusted with administration of the national park system by such means and measures as conform to the fundamental purpose of said parks, i.e., to conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 U.S.C. § 1) and, specifically, as to Sequoia National Park, for the preservation from injury of all timber, mineral deposits, natural curiosities and wonders and their retention in their natural condition. 16 U.S.C. § 43.

There can be no doubt that Interior has the power to construct and improve roads and trails in the national parks (16 U.S.C. § 8) and that, the wide discretion of Interior in that respect should not ordinarily be interfered with.

It appears, however, that in May, 1968, Interior adopted certain Park Road Standards providing that park roads are *not* continuations of state and federal highway network; that they should not be designed to serve as connecting links for routing motorists through the parks to reach ultimate destinations or simply as a connecting device to link points of interest and, further, that a professional ecological determination must precede approval of road construction and design to make sure that



resulting effects on wildlife, drainage, stream flow and climate will be minimal.

Plaintiffs also cite a 1962 House Committee Report of the Congressional Committee of Interior and Insular Affairs (dealing with the Padre Island National Seashore) stating that construction therein of a through highway for general public convenience would give that project a function which does not belong to it and that such a roadway might spoil its very purpose.

In the present case the record shows that the proposed highway, so far as it will cut through Sequoia National Park, is designed and intended, not as an adjunct to the National Park, itself, but as a connecting link to route motorists through the Park to reach an ultimate destination outside the Park—the proposed, private Mineral King resort-hotel complex in the adjoining forest game refuge area.

Thus, the question arises whether the particular highway here in question is fairly within the power of Interior as interpreted by its own standards.

#### *National Park Service—The Transmission Line*

It further appears from the record that Interior proposes to permit construction of a 66,000 volt power line across the National Park in order to enable the Developer to obtain necessary electric power for the project.

Title 16 U.S.C. § 45(c), which applies specifically to Sequoia National Park, provides that no permit for transmission lines or for the transmission of power within the Park limits shall be granted or made *without specific authority of Congress*.



Interior contends that this statute was intended to apply only to the construction and development of hydro-electro projects within the Park and does not preclude him from granting rights-of-way across park lands for transmission lines under the general power granted Interior by Title 16 U.S.C. § 5 to grant rights-of-way across public lands of the United States for electrical poles and lines for the transmission of electric power, provided that such right-of-way shall be allowed within or through any national park only upon approval of the chief officer of the department and upon a *finding* that the same is not incompatible with the public interest.

It will be noted, however, that this latter section is a general statute while Section 45(c), deals specifically with Sequoia National Park and, without making any distinction between electric projects within or without the Park, clearly provides that, so far as that Park is concerned, there shall be no permit for any transmission line or for the transmission of power within the Park limits without specific Congressional authority.

Thus, there arises the further question concerning the power of Interior to permit the transmission line—absent specific authority from Congress.

### *Failure to Hold Public Hearings*

Plaintiff contends that no public hearings were ever held by either the Forestry Service with respect to the Mineral King Development or by Interior with respect to the highway or transmission line.

It appears from the record that in March, 1953, Congressman Hagan conducted a hearing at Visalia to determine what could be done to expedite development

of Mineral King. There is, however, no record of any public hearing called or conducted by either the Forestry Service or by Interior.

Whether Forestry Service was required by law to hold such hearings is not clear.

As to Interior, however, plaintiffs contend that it has violated its own rule (34 Fed. Reg. 19 [1/29/69]), calling for both corridor and design public hearings with respect to any major road project that would have a substantial social, economic or environmental effect.

Plaintiff contends that a purported "revocation" of that rule by the new Secretary on April 26, 1969 (34 Fed. Reg. 6985)<sup>1</sup> was ineffective because there was no compliance by the Secretary with the Administrative Procedure Act (5 U.S.C. § 553(b)(c)), providing for publication of general notice of proposed rule making in the Federal Register (553(b)) and opportunity for interested persons to participate in the rule making (553(c)).

"Rule making" is defined by the Administrative Procedure Act (5 U.S.C. § 551(5)) to include, not only the formulation or amendment of rules, but also the "repealing" of rules.

Interior contends that the requirements of 5 U.S.C. § 553(b)(c) are not applicable to rule making on "a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts" (see, Sec. 553(a)(2)), or to "interpretive rules, general statements of policy or rules of agency organization, procedure or practice." (See, Sec. 553(b)(a)).

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<sup>1</sup>A press release of April 26, 1969 states that the reason for this purported revocation was to provide *even broader public review* and comment—not just on road building, but on all phases of the national park system.

Thus, there is presented the further question whether repeal, without general notice, of the pre-existing rule calling for public hearing concerning major road projects having substantial, social, economic or environmental effects, is a mere rule of procedure, practice or policy and, if not, whether Interior was required by its own rule to conduct public hearings on the highway in question.

### *Plaintiff's Standing to Sue*

Defendants contend that plaintiffs have no standing to sue because they have nothing more than a general interest in common with all citizens and cannot show that any private, substantive legally protected interest of theirs is being directly invaded within the meaning of such cases as *Associated v. Ickes*, 134 F.2d 694 (C.A. 2d 1943); *Anti-Facist v. McGrath*, 341 U.S. 123, 140-41, 151-52 (1951); *Perkins v. Lukins*, 310 U.S. 113, 125 (1940); *Associated v. Camp*, 406 F.2d 837, 838 (8th Cir. 1969).

We are of the opinion, however, that plaintiff, Sierra Club, a non-profit California corporation, organized and existing for the purposes described in its complaint (Par. 3), may be held to be sufficiently aggrieved to have standing as a plaintiff herein. See, *Scenic v. FPC*, 354 F.2d 619 (2d Cir. 1965); *United Church v. FCC*, 359 F.2d 994 (D.C. 1966); *Road League v. Boyd*, 270 F.Supp. 650, 661 (N.Y. 1968); *Powelton v. HUD*, 284 F.Supp. 809, 825-828 (Pa. 1968).

### *Propriety of Preliminary Injunction*

Defendants rest largely on the argument that there is no such urgency as would justify a preliminary injunction at this time.

It appears from the record that the National Park Service permit for construction of the highway by the State of California is ready for issuance at any time and, when issued, will authorize the State of California to proceed at any time thereafter with highway construction.

Affidavits presented on behalf of defendants indicate that the State of California will not actually be in a position to take bids for the highway construction until May 1, 1970 and that actual highway construction can not actually begin until July 1, 1970.

It appears, however, that as soon as Interior grants the highway permit, the State of California, which is not a party to this action and, therefore, not amenable to orders of this court, will be in a position to control the time within which highway construction contracts will be let and thus in effect determine the time when Agriculture must issue its permits to the Developer for construction of the Mineral King project.

In view of the possibility that Interior may issue the highway permit at any time, thereby substantially changing the existing situation and setting events in motion, plaintiff should not be left to "watchful waiting" upon the State of California. We find, therefore, that there is a sufficient showing of imminent and irreparable injury to require pendente lite relief.

### *Conclusion*

It is true that the scope of judicial review over officials to whom Congress has entrusted the control and management of public lands is a particularly narrow one in which

there is, perhaps, less reason for interference with administrative discretion than in any other kind of administrative action. *Ickes v. Underwood*, 141 F.2d 546, 548 (C.A. D.C. 1944).

Nevertheless, we find that plaintiff has raised questions, concerning possible excess of statutory authority, sufficiently substantial and serious to justify a preliminary injunction against both Agriculture and Interior pending trial of these issues on the merits or the further order of this court.

It is beside the point to argue, as do defendants, that a preliminary injunction in this case would interfere with progress by raising doubts about the validity of similar arrangements made with respect to 84 other recreation areas, including 5 in California.

This court is not concerned with the controversy between so-called progressives and so-called conservationists. Our only function is to make sure that administrative action, even when taken in the name of progress, conforms to the letter and intent of the law as laid down by Congress and which only the Congress can change whenever it finds such change to be in the public interest.

Plaintiffs' motion for preliminary injunction is granted.

Dated: July 23rd, 1969.

W. T. Sweigert,  
United States District Judge

Filed July 23, 1969,

Clerk, U.S. Dist. Court, San Francisco.



FILED  
AUG-4 1969  
C. C. EVENSEN, Clerk

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, a non-profit California corporation,  
*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
of the Interior of the United States, et al.,  
*Defendants.*

CIVIL NO.

51464

**PRELIMINARY  
INJUNCTION**

This cause coming on to be heard on the motion of plaintiff for a preliminary injunction and the Court having considered the verified complaint, the affidavits submitted in support of and in opposition to said motion and the arguments of counsel and being fully advised of the premises and; (a) it appearing to the Court that the defendants named, and each of them, threaten to commit the acts complained of and hereinafter set forth as enjoined hereby; and (b) that unless said acts are enjoined, irreparable injury may result to plaintiff; and (c) that the pendency of a preliminary injunction is not likely at this time to produce costs or damages to defendants, or any of them; and good cause appearing therefor,

NOW, THEREFORE, PENDING FURTHER ORDER OF THIS COURT, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendants CLIFFORD M. HARDIN, J. W. DEINEMA and M. R. JAMES, and each of them, individually and in their respective official capacities, and their respective agents, serv-

ants, employees and attorneys and all persons in active concert and participation with them be and they hereby are restrained and enjoined from doing any of the following acts: from granting any permits, rights-of-way or approvals with respect to the Mineral King development plan of Walt Disney Productions, Inc., approved by the Secretary of Agriculture on January 21, 1969, or of any other development of like or similar nature, the effect of which grant would be to authorize construction or any other physical interference with, or disturbance of, the terrain within the Sequoia National Game Refuge, including all physical features located thereon; provided, however, that this shall not be deemed to preclude the conduct of investigations, planning, surveys and exploration in connection with the design of said development which do not interfere with the said terrain or physical features or the issuance of any permits, rights-of-way or approvals incident thereto.

2. Defendants WALTER J. HICKEL and JOHN S. McLAUGHLIN, and each of them, individually and in their respective official capacities, and their respective agents, servants, employees and attorneys and all persons in active concert and participation with them be and hereby are restrained and enjoined from doing any of the following acts: from granting any permits, rights-of-way or approvals with respect to the approximately 9.2 mile highway which is more particularly identified in plaintiff's Second Claim for Relief, proposed to cross the Sequoia National Park to the site of the Mineral King development of Walt Disney Productions, Inc., or of any other highway of like or similar nature the effect of which grant would be to authorize construction or any other physical interference with, or disturbance of, the terrain of Sequoia National Park, including all physical features located therein; provided, however, that this shall not be deemed to preclude investigations, planning, surveys and exploration in connection with the design of said highway which do not interfere with the terrain or the physical features located thereon or of the issuance of permits, rights-of-way or approvals incident thereto.



3. That, for the present, no bond is required in connection with this injunction, the Court specifically reserving the right to review at any time the likelihood that the continued pendency of this injunction would be the cause of damage to defendants and the right to require that a bond be furnished as a condition to the continued existence of the order at such time as such damage would appear likely.

4. That the defendants shall have ten (10) days within which to file an answer to the allegations of the complaint from the date hereof.

Dated: August 4th, 1969

**W. T. SWEIGERT**

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Judge, United States District Court  
Northern District of California

FILED

AUG 12 1969

C. C. EVENSEN, Clerk

CECIL F. POOLE  
 United States Attorney  
 PAUL E. LOCKE  
 Assistant United States Attorney  
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 450 Golden Gate Avenue  
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SIERRA CLUB, a non-profit California corporation,

*Plaintiff,*

vs.

WALTER J. HICKEL, individually and as Secretary  
 of the Interior of the United States, et al.,

*Defendants.*

CIVIL NO.

51464

**JOINT ANSWER**

COME NOW the defendants, and each of them, and file this Joint Answer to the Complaint herein, insofar as they or any of them are required to answer.

**I**

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, except that defendants admit that plaintiff is a non-profit corporation organized and operating under the laws of the State of California.

## II

Defendants admit the allegations contained in Paragraph 4 of the Complaint, except that the correct name of the Federal Agency in charge of the Sequoia National Forest is the Forest Service and not the National Forest Service as referred to in Sub-Paragraphs (c) and (e) thereof.

## III

Defendants admit the allegations contained in Paragraphs 5 and 6 of the Complaint.

## IV

Defendants admit the allegation in the first sentence of Paragraph 7 of the Complaint and admit the allegations in Sub-Paragraph (c) thereof except that the estimates referred to therein are peak figures of the respective alleged uses and not average hourly or daily estimates of said uses; deny that the facilities referred to in Sub-Paragraph (a) thereof will occupy an area in excess of 80 acres; and deny the allegations in Sub-Paragraph (b) thereof.

## V

Defendants deny the allegations contained in the first complete sentence of Paragraph 8 of the Complaint but admit the remaining allegations contained in said Paragraph 8.

## VI

With respect to Paragraphs 1, 2, 9, 10 and 11 of the Complaint, defendants deny each and every allegation contained in said paragraphs.

## VII

The allegation contained in Paragraph 12 of the Complaint is a conclusion of law and requires no answer.

## VIII

Answering Paragraph 13 of the Complaint, defendants re-plead, reallege, and incorporate herein each and every admission, denial and allegation contained in Paragraphs I through VI

above, and by reference include the same as if herein pleaded in full.

### IX

Defendants admit the allegations contained in Paragraph 14 of the Complaint, except that defendants admit that the length of the road is only substantially correct.

### X

Defendants admit the allegations contained in Paragraph 15 of the Complaint but deny that the State of California will immediately let contracts for the commencement of construction.

### XI

With respect to Paragraphs 16, 17, 18, and 19 of the Complaint, defendants deny each and every allegation contained in said paragraphs.

### XII

The allegation contained in Paragraph 20 of the Complaint is a conclusion of law and required no answer.

## AFFIRMATIVE DEFENSES

As affirmative defenses to the Complaint herein, defendants allege as follows:

### XIII

The Complaint, including each of the separate claims thereof, fails to state a claim or claims upon which relief can be granted.

### XIV

The plaintiff does not have standing to bring this action.

### XV

The Court lacks jurisdiction over defendants, and each of them, and over the subject matter of the Complaint, including each of the claims thereof.

## XVI

The Court lacks jurisdiction of this suit in that there is no controversy in this matter which exceeds the sum of \$10,000, and the Complaint does not set forth any facts to warrant the conclusion that there is such amount involved.

## XVII

Plaintiff's Complaint is in reality a suit against the United States, in which the United States has not consented to be sued and plaintiff is therefore barred from bringing this action.

## XVIII

Plaintiff is not entitled to maintain this suit by reason of laches since plaintiff had notice on or before May 1, 1965, of the proposed recreation development at Mineral King in Sequoia National Forest to be sponsored by the Forest Service, U. S. Department of Agriculture, and was aware of the contents of the prospectus issued by the Forest Service in February 1965, which prospectus contained all fundamental standards and proposed permits to be issued and actions to be taken by defendants in connection with said recreation development, and plaintiff made no attempt to obtain judicial determination of its alleged rights until more than four years after having knowledge of said proposed development. That in absence of plaintiff's effort to obtain prompt judicial relief of its alleged rights, defendants in their official capacities have expended large sums of money in planning and investigation in connection with the proposed recreation development. Plaintiff has thereby been guilty of such laches as should in equity bar plaintiff from maintaining this action.

WHEREFORE, defendants pray:

1. That plaintiff take nothing by its Complaint herein;
2. That all specific relief against defendants or any of them be denied;
3. That all orders for relief pendente lite be dissolved;

4. That judgment be entered in favor of defendants and each of them against plaintiff;

5. That defendants may have judgment for costs;

6. For such other and further relief as the Court deems proper.

Dated: August 12, 1969

Respectfully submitted,

CECIL F. POOLE  
United States Attorney

By PAUL E. LOCKE  
PAUL E. LOCKE

Assistant United States Attorney

Attorneys for Defendants

**CERTIFICATE OF SERVICE BY MAIL**

I HEREBY CERTIFY that a copy of the foregoing JOINT ANSWER was this date mailed, postage thereon fully prepaid, to the following:

Feldman, Waldman & Kline  
Leo E. Borregard  
Leland R. Selna, Jr.  
Matthew P. Mitchell  
2700 Russ Building  
San Francisco, California 94104  
Attention: Leland R. Selna, Jr.,

attorneys for plaintiff.

Dated: August 12, 1969

PAUL E. LOCKE  
PAUL E. LOCKE  
Assistant United States Attorney

Corrected October 16, 1970

United States Court of Appeals  
For the Ninth Circuit

SIERRA CLUB; a California corporation,

*Appellee,*

vs.

WALTER J. HICKEL, individually, and as Secretary of the Interior of the United States; JOHN S. McLAUGHLIN, individually, and as Superintendent of Sequoia National Park; CLIFFORD M. HARDIN, individually, and as the Secretary of Agriculture of the United States; J. W. DEINEMA, individually, and as Regional Forester, Forest Service, and M. R. JAMES, individually, and as Forest Supervisor of the Sequoia National Forest,

*Appellants.*

No. 24,966

[September 16, 1970]

Appeal from the United States District Court  
for the Northern District of California

Before: HAMLEY, KILKENNY and TRASK,  
Circuit Judges.

TRASK, Circuit Judge:

This is an appeal from an order of the district court granting a preliminary injunction. The action was instituted by a verified complaint filed by the Sierra Club, a non-profit California corporation, against Walter J. Hickel, individually, and as Secretary of the Interior, Clifford M. Hardin, individually, and as Secretary of



Agriculture, and the Superintendent of the Sequoia National Park and Supervisor of the Sequoia National Forest.

The relief sought was a declaratory judgment and preliminary and permanent injunctions enjoining issuance of the permits required for implementation of a plan proposed by Walt Disney Productions, Inc., for a large scale commercial-recreational development in and near Mineral King Valley in the Sequoia National Game Refuge located within Sequoia National Forest in California. The development also involved a proposed road which would in part traverse a portion of Sequoia National Park.

Amicus curiae briefs supporting the position of the defendants-appellants were filed by the United States Ski Association, the Far West Ski Association and the County of Tulare.

Jurisdiction of the district court was asserted under Section 10 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706; under the Federal Question Statute, 28 U.S.C. § 1331(a); the 1962 Mandamus Act, 28 U.S.C. § 1361; and under the Declaratory Judgments Act, 28 U.S.C. § 2201. Jurisdiction of this court rests on 28 U.S.C. § 1292(a)(1) authorizing interlocutory appeals from orders granting injunctions.

A brief summary of the controversy is as follows: In February 1965, the Forest Service of the Department of Agriculture published a prospectus inviting interested parties to submit proposals for the development of an all-year recreational project in Mineral King Valley in the Sequoia National Forest, in accordance with certain minimum requirements as established by the prospectus.

Walt Disney Productions (Disney) and five other bidders submitted proposals in response to the prospectus. After careful study the Secretary of Agriculture determined the Disney proposal to be the best. Thereafter, on October 10, 1966, a special use permit for planning was issued to Disney for a term of three years in order to enable Disney to make the necessary studies to prepare a master plan for the project which would meet with Forest Service approval. The plan was duly submitted and approved by the Forest Service on January 21, 1969, and is the plan that is the subject of this litigation.

In connection with the plan the Department of the Interior has proposed to permit the State of California to construct a new access road to Mineral King Valley. The new highway would be 20.4 miles long, of which 6.5 miles would cross Bureau of Land Management (Department of Interior) land, 9.2 miles would cross Sequoia National Park (Department of Interior) land, 1.8 miles would cross Sequoia National Forest (Department of Agriculture) lands, and the remaining 2.9 miles would cross various parcels of private property. It would approximately parallel the existing Mineral King roadway which appears on the map (See Record, 115) to be a tortuous road now described as substandard. In connection with the project, the Secretary of the Interior also agreed to grant a right of way for electrical transmission lines through the park.

In announcing the master plan and its approval, the Forest Service stated:

“Our goal is to provide a needed public service so that the scenic, aesthetic, and recreational resources

of Mineral King can be enjoyed by the American people as part of their heritage. At the same time, we intend to work with the Disney organization to assure that the development can be accomplished without substantial impairment or permanent undesirable ecological impact. We are confident that these twin challenges have been faced in a creative and artistic fashion." (T.R. 52.)

The initial description of the facilities proposed stated that accommodations would be provided for 1,505 overnight guests plus day visitors. A sub-level automobile reception center would be provided outside of the main Mineral King Valley with a cog-assist railway to transport people to the main village. No visitor automobiles would be allowed in Mineral King Valley proper. The announcement of the Forest Service continued:

"While the Mineral King area is certain to become increasingly popular, its ultimate development will be guided by aesthetic and ecological limitations, rather than market potential. The Disney master plan has been designed with this consideration uppermost."

On the merits, the Sierra Club contends that the Secretary of Agriculture who has the responsibility under Congress for management of the national forests has exceeded his authority and has acted illegally as well as arbitrarily and capriciously in approving the master plan proposed by Disney. It urges that the Secretary of Agriculture's proposal to issue a term permit for an eighty acre parcel for a term of thirty years for construction of improvements such as hotels, pools and parking lots, and to issue a revocable permit for additional acreage upon which

such improvements as ski lifts, trails, and sewage treatment facilities would be built, would constitute illegal action in excess of authority. Second, the Sierra Club asserts that the action of the Secretary of the Interior in his proposal to permit the State of California to construct a road across Sequoia National Park for a distance of 9.2 miles to replace an existing road across the park would be illegal. Finally, the club asserts that no authority exists for the Secretary of the Interior to issue a permit for the construction of a transmission line across the park lands as a part of the master plan.

Encompassing all is the vehement argument of Sierra that the necessary result of the development proposal is the "permanent destruction of natural values" and the "irreparable harm to the public interest." These, it is asserted, are "irreversible effects of administrative lawlessness."

Article IV, Section 3 of The United States Constitution commits the management and control of the lands of the United States to Congress. That congressional power is unlimited. The Supreme Court said in *Gibson v. Chouteau*, 80 U.S. (13 Wall.) 92, 99 (1872):

"With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations."

See also *Alabama v. Texas*, 347 U.S. 272, 274 (1954).

Congress may delegate the power to manage federal lands to the Executive. *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 336-338 (1963). With respect to the national forests, Congress has authorized the Secretary



of Agriculture "to regulate their occupancy and use." Organic Administration Act, 16 U.S.C. § 551. With respect to national parks, Congress has authorized the Secretary of the Interior "to promote and regulate the use" of such parks, to "grant privileges, leases, and permits for the use of land" in the parks, and to cooperate with the Secretary of Agriculture in administering contiguous national forests. Organic Act of the National Park Service, as amended, 16 U.S.C. § 1, *et seq.*

The Secretaries purport to act pursuant to these basic sources of authority, together with supplemental legislative support.

### (1) *Standing*

Appellants have raised the threshold question as to whether appellee has sufficient legal standing to bring this action. There is no dispute that Sierra Club is a legally organized and existing corporation. If an interest of such a corporate person, entitled to legal protection, is damaged or denied, that corporation is entitled to redress in the courts.

"The only problems about standing should be what interests deserve protection against injury, and what should be enough to constitute an injury."<sup>1</sup>

Simply stated but difficult to apply, standing has been called "one of the most amorphous concepts in the entire domain of the public law."<sup>2</sup>

<sup>1</sup>Davis, *The Liberalized Law of Standing*, 37 U. Chi. L. Rev. 450, 468 (1970).

<sup>2</sup>*Scanwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859, 861 (D.C. Cir. 1970).

The basic concept of standing was summarized in *Associated Industries v. Ickes*, 134 F. 2d 694, 700 (2d. Cir. 1943) as follows:

"In a suit in a federal court by a citizen against a government officer, complaining of alleged past or threatened future unlawful conduct by the defendant, there is no justiciable 'controversy,' without which under Article III, § 2 of the Constitution, the court has no jurisdiction, unless the citizen shows that such conduct or threatened conduct invades or will invade a private substantive legally protected interest of the plaintiff citizen; such invaded interests must be either of a 'recognized' character, at 'common law' or a substantive private legally protected interest created by statute."

In that same case, in order to reconcile previous decisions of the Supreme Court where an individual was permitted to assert a position which appeared to protect a public interest rather than a traditional, substantive legally-protected interest of a citizen-plaintiff, the court suggested the "private Attorney Generals" theory, as follows:

"While Congress can constitutionally authorize no one, in the absence of an actual justiciable controversy, to bring a suit for the judicial determination either of the constitutionality of a statute or the scope of powers conferred by a statute upon government officers, it can constitutionally authorize one of its own officials, such as the Attorney General, to bring a proceeding to prevent another official from acting in violation of his statutory powers; for then an actual controversy exists, and the Attorney General can properly be vested with authority, in such a controversy, to vindicate the interest of the public

or the government. Instead of designating the Attorney General, or some other public officer, to bring such proceedings, Congress can constitutionally enact a statute conferring on any non-official person, or on a designated group of non-official persons, authority to bring a suit to prevent action by an officer in violation of his statutory powers; for then in like manner there is an actual controversy, and there is nothing constitutionally prohibiting Congress from empowering any person, official or not, to institute a proceeding involving such a controversy, even if the sole purpose is to vindicate the public interest. Such persons, so authorized, are, so to speak, private Attorney Generals." 134 F. 2d at 704.

Such a notion would support the rationale of many cases, but not all. More recently, the amendment to the Administrative Procedure Act, and particularly Section 10, thereof, 5 U.S.C. §§ 701-706, together with a profusion of cases relying upon it and interpreting it, have developed new precedents on the law of standing. See, e.g., *Barlow v. Collins*, 397 U.S. 159 (1970); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Flast v. Cohen*, 392 U.S. 83 (1968); *Citizens Committee for Hudson Valley v. Volpe*, 425 F. 2d 97 (2d. Cir. 1970); *Scanwell Laboratories, Inc. v. Shaffer*, 424 F. 2d 859 (D.C. Cir. 1970). See also Davis, *The Liberalized Law of Standing*, U. Chi.L.Rev. 450 (1970).

Turning to the facts of this case to determine whether plaintiff-appellee has standing, the Sierra Club in its complaint alleges that it is a non-profit corporation under the laws of the State of California. It claims a membership of approximately 78,000 nationally, with approximately 27,000 members residing in the San Francisco Bay



Area. It asserts that it has for many years taken a special interest in the conservation and sound maintenance of the national parks and forests and particularly lands on the slopes of the Sierra Nevada mountains. It states that "its interests would be vitally affected by the acts hereinafter described and would be aggrieved by those acts of the defendants as hereinafter more fully appears."

Up to this point there is no adversary position stated between the Sierra Club and the Secretary of Agriculture or the Secretary of the Interior. Not only do the latter have a special "interest" in the national parks and forests but they are charged by Congress pursuant to a constitutional mandate with the direct responsibility for the protection and conservation of the national parks and forests.

The club's complaint continues by outlining the recreational development proposal which constitutes the substance of its grievance. It concludes by particularizing the acts of the Secretaries which it asserts are in excess of statutory jurisdiction, are arbitrary and capricious and constitute an abuse of discretion. The proposed development and the permits to authorize it are alleged to be: (1) in violation of the statute limiting the size, terms and manner of occupation of lands for resorts and associated facilities; (2) in violation of the permit power of the Secretary of Agriculture; (3) beyond the jurisdiction of the defendants as to the National Game Refuge. In a second claim for relief the complaint asserts that a proposed highway will be built which will cross 9.2 miles of Sequoia National Park and that the authorization of this roadway is in excess of authority. In its brief the appellee complains of the proposed construction of a transmission line

within the park although this is not asserted in the complaint. The complainant does not assert that any of its property will be damaged, that its organization or members will be endangered or that its status will be threatened. Certainly it has an "interest" in the sense that the proposed course of action indicated by the Secretaries does not please its officers and board of directors and through them all or a substantial number of its members. It would prefer some other type of action or none at all. On the other hand, the United States Ski Association, the Far West Ski Association claiming 109,000 supporters, and the County of Tulare in which the development will be located, favor the action.

We do not believe such club concern without a showing of more direct interest can constitute standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all of the citizens by two cabinet level officials of the government acting under Congressional and Constitutional authority.

The district court relied on four cases to support its position that the Sierra Club had standing. They are *Scenic Hudson Preservation Conference v. F.P.C.*, 354 F. 2d 608 (2d. Cir. 1965), *cert. denied*, 384 U.S. 941 (1966); *United Church of Christ v. F.C.C.*, (123 U.S. App. D.C. 328), 359 F. 2d 994 (D.C. Cir. 1966); *Road Review League v. Boyd*, 270 F. Supp. 650, 661 (S.D. N.Y. 1967), and *Powelton Civic Home Owners Association v. Department of H. & U. Dev.* 284 F. Supp. 809, 825-28 (E.D. Pa. 1968).

The *Scenic Hudson* case involved a petition to set aside a license to Consolidated Edison of New York to con-

struct a pumped storage hydro-electric project on the west side of the Hudson River at Storm King Mountain. The petitioners were three towns and the Scenic Hudson Preservation Conference—an association of conservationist organizations. The license was issued by the Federal Power Commission after hearings under the provisions of the Federal Power Act in which petitioners participated as parties. Section 313(b) of the Act specifically grants to a party aggrieved by an order of the commission the right of review by the United States courts of appeals. There is no such statute involved in the present case to give standing.

In addition, the Second Circuit pointed out that several of the petitioners had sufficient actual economic interest to support their standing to obtain review. 354 F. 2d at 616-17. No such showing has been made in the present case.

The *United Church of Christ* case, *supra*, was one of a number of consumer cases. There the F.C.C. had denied to petitioners the right to intervene and, as listeners to the programming of a radio and television station to present their views in a proceeding to renew the license of that station. In that case as in other consumer cases, the court pointed out that the listeners were the persons "affected" or "aggrieved." They had standing in the same sense coal consumers were found to have standing to review a minimum price order<sup>3</sup> or that a transit rider had standing to appeal a fare increase.<sup>4</sup>

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<sup>3</sup>*Associated Industries v. Ickes*, 134 F. 2d 694 (2d Cir. 1943).

<sup>4</sup>*Bebchick v. Public Utilities Commission*, 287 F. 2d 337 (D.C. Cir. 1961).

*Road Review League, supra*, was a complaint to review and set aside an order of the Federal Highway Administrator establishing the alignment of an interstate highway. The plaintiffs were persons and organizations who would be directly affected by the proposed road including persons whose property would be taken. This identification of the plaintiffs is itself a statement of the distinction between that case and the one under consideration. *Powelton Civic Home Owners Association v. Department of H. & U. Dev., supra*, is the final case relied upon by the trial court. We consider it inapposite. It involved the location of an urban development project. The plaintiffs were persons whose homes and properties would be taken to implement the project. The court stated:

"However, we are of the opinion that the plaintiffs also have standing in the more traditional sense: they have substantive legal rights conferred by the National Housing Act. They have private individual legal rights; and they are the appropriate representatives of legal rights conferred by the Housing Act on the general public." 284 F. Supp. at 821.

The *Powelton* case would be in point if the homes of residents at Mineral King were to be razed and those homeowners objected. There is no such showing.

On this appeal appellee does not limit itself to the four cases cited by the district court in support of its standing to sue. It calls attention to the recent cases decided by the Supreme Court and by the lower courts. We have examined each of these cases and others not cited, but fail to be convinced that any of them go so far as to support the standing claim here. We are not unmindful



of the Supreme Court's recent opinion in *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150 (1970), which was an action by plaintiffs, who sold data processing services to business generally, against the Comptroller of the Currency who had ruled that national banks could make their data processing services available to other banks and to bank customers. It was thus a competitor's suit and so designated by the Court. The first question to be asked by the Court was whether the Comptroller's action had caused injury in fact to the petitioners. The answer was that there was no doubt but that such injury existed or would develop in the future because the competition would entail loss of profits. Here, therefore, there was direct injury in fact, and therefore there was standing. The Court went beyond these facts in its discussion of standing generally and the effect of the Administrative Procedure Act in particular. It said that aside from the case or controversy test, standing is concerned with the question:

"Whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." 397 U.S. at 153.

The significance of the language is not entirely clear. It is likewise not made clear in a companion case decided the same day and involving the same question.<sup>5</sup> We submit that it does not establish a test separate and apart from or in addition to the test which the Court first looked to in *Camp*:

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<sup>5</sup>*Barlow v. Collins*, 397 U.S. 159 (1970). See discussion of both cases in Davis, *supra*.

"The first question is whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise. There can be no doubt but that petitioners have satisfied this test. The petitioners not only allege that competition by national banks in the business of providing data processing services might entail some future loss of profits for the petitioners, they also allege that respondent American National Bank & Trust Company was performing or preparing to perform such services for two customers for whom petitioner Data Systems, Inc., had previously agreed or negotiated to perform such services." 397 U.S. at 152.

This is the test which will reconcile most if not all of the decided cases and also fit the standard of the Administrative Procedure Act. "Standing to sue," as the phrase indicates, refers to the posture of the plaintiff and not to the "legal interests" to be unravelled. The Court said in *Jenkins v. McKeithen*, 395 U.S. 411, 423 (1969):

"In this sense, the concept of standing focuses on the party seeking relief, rather than on the precise nature of the relief sought. See *Flast v. Cohen*, *supra*, at 99-100. The decisions of this Court have also made it clear that something more than an 'adversary interest' is necessary to confer standing. There must in addition be some connection between the official action challenged and some legally protected interest of the party challenging that action. See *Flast v. Cohen*, *supra*, at 100-106."

Nor does the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and particularly Section 702, aid the appellee

here.<sup>6</sup> Judge Burger, now Mr. Chief Justice Burger, in a concurring opinion in *National Association of Securities Dealers, Inc. v. SEC*, 420 F. 2d 83, 101 (D.C. Cir. 1969), *cert. granted*, 397 U.S. 986 (1970), commented that the above section broadened the basis of standing, as follows:

"Appellees also assert that § 702(a) (Supp. II, 1967), embodies an independent and self-sufficient statutory basis for standing. I do not feel that the APA was meant to arrest the development of the law of standing as of the date of its passage:

'[W]e would certainly be prepared to hold in an appropriate case that one who complains of administrative action may find a remedy under the Act beyond the strict scope of judicial review recognized prior to its adoption. . . .'

"*Kansas City Power & Light Co. v. McKay*, 96 U.S. App. DC. 273, 282, 225 F.2d 924, 933, *cert. denied*, 350 U.S. 884 (1955). *Nevertheless, although the review provisions of the APA were not meant to retard the judicial development and adaptation of the law of standing, it does not establish an independent right to review absent judicially articulated notions of 'legal wrong' of 'adversely affected or aggrieved . . . within the meaning of any relevant statute.'* See *Pennsylvania R.R. Co. v. Dillon*, *supra* note 2." 420 F.2d at 104 n.5. (*Emphasis supplied*).

In almost every carefully-considered case where standing is sustained it is apparent in the facts or in the opinion that when the situation of the plaintiff is examined there is an element of legal wrong being afflicted upon

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<sup>6</sup>"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.



him or he is adversely affected by agency action or aggrieved within the meaning of a relevant statute.<sup>7</sup> That adverse effect, of course, need not be economic but, as the Supreme Court has recently observed, may be aesthetic, conservational or recreational. *Data Processing, supra*, 397 U.S. at 154. It is this element which appellee fails to sufficiently allege in its complaint and support by its exhibits attached. It does not allege that it is "aggrieved" or that it is "adversely affected" within the meaning of the rules of standing.<sup>8</sup> Nor does the fact that no one else appears on the scene who is in fact aggrieved and is willing or desirous of taking up the cudgels create a right in appellee. The right to sue does not inure to one who does not possess it, simply because there is no one else willing and able to assert it.

We do not believe that the Sierra Club's complaint alleges that it or its members possess a sufficient interest for standing to be conferred. There is no allegation in the complaint that members of the Sierra Club would be affected by the actions of defendants-appellants other than the fact that the actions are personally displeasing or distasteful to them.

In holding that the complaint fails to allege that the Club has the requisite standing to institute this action, we are aware that federal courts have accorded the Club standing to object to alleged administrative infringement upon natural resources in two recent cases: *Citizens Com-*

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<sup>7</sup>Davis, *supra* at 466. See also *South Hill Neighborhood Assn. v. Romney*, 421 F. 2d 454 (6th Cir. 1969), *cert. denied*, 397 U.S. 1025 (1970).

<sup>8</sup>"Aggrieved" is defined as "Having suffered loss or injury; damaged; injured." Black's Law Dictionary 87 (4th ed. 1968).

*mittee for the Hudson Valley v. Volpe*, 425 F.2d 97, (2nd Cir. 1970) and *Parker v. United States*, 307 F. Supp. 685 (D. Colo. 1969). In both of these cases, however, the Sierra Club was joined by local conservationist organizations made up of local residents and users of the area affected by the administrative action. No such persons or organizations with a direct and obvious interest have joined as plaintiffs in this action.<sup>9</sup> The question of standing here must be decided from the facts in this action. We hold that they do not establish the interest necessary for that purpose.

## (2) *The merits*

Apart from questions of standing, an order granting a preliminary injunction must be based upon established equitable grounds. "The grant of a preliminary injunction is the exercise of a very far reaching power never to be indulged except in a case clearly warranting it." *Dymo Industries, Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964). In order to obtain such relief, particularly against the discretionary action of an official of cabinet rank, the plaintiff must establish a strong likelihood or "reasonable certainty" that he will prevail on the merits at a final hearing. *Garlock, Inc. v. United Seal, Inc.*, 404

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<sup>9</sup>To the extent to which *Citizens Committee for Hudson Valley v. Volpe*, indicates that the Sierra Club has standing within the "private Attorney Generals" rule, we respectfully disagree. We believe that rule is limited as it states to cases where Congress has enacted a statute "conferring on any non-official person, or on a group of non-official persons, authority to bring a suit" to prevent unauthorized official action. See, *Scanwell Laboratories, Inc. v. Shaffer*, 424 F. 2d at 864. We find no indication in any federal statute that Congress has "conferred" on the Sierra Club or any group like it, authority to bring suits to challenge official action.

F.2d 256, 257 (6th Cir. 1968); *H. E. Fletcher Co. v. Rock of Ages Corp.*, 326 F.2d 13, 17 (2d Cir. 1963).

"It is a cardinal principle of equity jurisprudence that a preliminary injunction shall not issue in a doubtful case. Unless the court be convinced with reasonable certainty that the complainant must succeed at final hearing the writ should be denied." *Hall Signal Co. v. General Ry. Signal Co.*, 153 F. 907, 908 (2d Cir. 1907).

In addition, before such a writ should issue, the applicant must show that it will suffer irreparable injury. The court must balance the damage to both parties. *Dorfmann v. Boozer*, 414 F.2d 1168, 1173 (D.C. Cir. 1969). The injunction must rest upon a convincing presentation and, because of this, an appellate court may reverse an order granting a preliminary injunction where the appellee's showing is something less than the persuasive demonstration upon which an injunction must be predicated. *District 50 UMW v. International Union, UMW*, 412 F.2d 165, 167 (D.C. Cir. 1969); *Udall v. D.C. Transit System, Inc.*, 404 F.2d 1358, 1360-61 (D.C. Cir. 1968). As will appear, the appellee herein has shown neither a reasonable certainty that it will prevail nor irreparable injury.

We recognize that in appraising these issues, even upon a preliminary basis, our function is not to make an original judgment or to make a final decision on the merits. See, e.g., *Public Service Commission of Wisconsin v. Wisconsin Telephone Co.*, 289 U.S. 67, 70 (1933); *Industrial Bank of Washington v. Tobriner*, 132 U.S. App. D.C. 56, 405 F.2d 1321, 1324 (D.C. Cir. 1968). The district court has done this. The function of this court on appeal is

to determine whether in that original preliminary injunction there has been an abuse of sound discretion of the district court. *Washington Capitols Basketball Club Inc. v. Barry*, 419 F.2d 472, 475 (9th Cir. 1969); *Ross Whitney Corp. v. Smith Kline & French Labs.*, 207 F.2d 190, 194 (9th Cir. 1953).

The district court has first considered the development in the light of the permits which are to be issued by the Secretary of Agriculture and has concluded that it "may involve a violation not only of the letter, but also the purpose and intent" of the applicable law. The court directed its attention particularly to the use by the Secretary of his authority to issue permits to accomplish the objectives sought. Examining the same documentation in the light of the established practices of the Secretary, we respectfully come to a different conclusion.

The proposal of Disney and the action taken by the Secretary is to permit a land use of forest lands by the issuance of two types of permits. The first type is a term permit for an aggregate of eighty acres with a maximum term of thirty years. The second is called a "revocable permit", meaning the Secretary imposes no limitation on time or acreage.

The district court has concluded that Congress has never expressly authorized revocable permits and that the only authority to issue them is under the general power to regulate the forests and under a 1928 Attorney General's opinion. Upon such a tenuous base, the broad application which is proposed here becomes questionable to the lower court. We find the Secretary's authority rests upon much firmer ground.

Originally the management of the lands reserved for national forests was under the supervision of the Secretary of the Interior. In 1905 these powers were transferred to the Secretary of Agriculture,<sup>10</sup> and he was given authority to make rules and regulations to preserve the forests from destruction.<sup>11</sup> As early as May 31, 1905, the Secretary of Agriculture was advised by the Attorney General that he had the authority to issue revocable permits.<sup>12</sup>

This permit authority under the Secretary's general regulatory power was upheld by the Supreme Court in *United States v. Grimaud*, 220 U.S. 506 (1911). At the time of the amendment of 16 U.S.C. § 497 in 1956 to authorize the issuance of term permits for eighty acres for thirty years, the House Report commented on the practice of the Secretary to issue revocable permits under his general regulatory powers, saying:

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<sup>10</sup>Act of Feb. 1, 1905, Ch. 288, 33 Stat. 628.

<sup>11</sup>Act of June 4, 1897, 30 Stat. 35.

<sup>12</sup>An application for a permit to occupy forest lands for use in conducting a fish salter, oil and fertilizer plant was made to the Secretary. He requested an opinion from the Attorney General as to his authority. Replied the Attorney General:

"It would therefore seem that when, in the exercise of that discretion, you determine that the granting of a permit to use and occupy a reservation for a specified purpose is consistent, according to your judgment, with insuring the objects for which the reservation was created, then your decision in the premises is definitive and subject to review in no other way than by the Congress from which your power to act was derived. Answering your first question therefore, I have to advise you that, in my opinion, you possess authority to grant a permit for such a purpose as that set forth in the application referred to by you."

In the same opinion, with respect to an inquiry as to the time for which such a permit might be issued, the Attorney General responded "... the permits should not be given for a longer period than, under the circumstances of each case would seem reasonable."  
25 Op. Att'y Gen. 470, 472 (1905).



"The Department of Agriculture now has adequate authority to issue revocable permits for all purposes under the act of June 4, 1897 (16 U.S.C. 551)." House Report No. 2792, U.S. Code Cong. & Ad. News, p. 3635 (1956).<sup>13</sup>

The court below has understandably relied upon the authority of the opinion of the Attorney General to the Secretary of War, 35 Op. Att'y Gen. 485 (1928). That opinion is the basis for the court's discussion of the necessity that a revocable permit be terminable "at will" and that therefor *this* permit is not properly issued. We have found no such limitation apart from this Attorney General's opinion. The same erroneous premise results in the district court's concern about the removability of any improvements placed upon the land covered by the revocable permit. It is at the bottom of the district court's conclusion that a combination of a term permit and a revoc-

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<sup>13</sup>The district court has cited and relies upon an opinion of the Attorney General in 1928 as one which "narrowly" restricts the implied power of the Secretary of Agriculture to issue revocable permits. 35 Op. Att'y Gen. 485 (1928). This opinion for some inexplicable reason was cited to the district court by the defendants. It had nothing to do with the authority of the Secretary of Agriculture under the statute granting him power over the forests. It was an opinion addressed to the Secretary of War in answer to an inquiry as to whether the Secretary of War had the authority to grant to the Southern Pacific Railroad Co. a permit to construct a railroad line across a portion of a California military reservation. The Attorney General pointed out that the Secretary of War had no power to grant any permanent estate for railroad purposes and no express statutory authority to grant revocable licenses or permits. The opinion also pointed out a long administrative practice in granting some revocable permits and then in the guarded language quoted by the trial court below, opined that in very limited circumstances such a revocable permit might be granted. Counsel for the Secretary of Agriculture apparently cited this opinion for lack of one directly in point. It need not have done so. As the district court pointed out, the opinion adds nothing to the Secretary's case.

able permit may be an impermissible and unlawful exercise of administrative authority. Beginning from a correct premise that the revocable permit is an approved device for forest management under Congressional mandate from the Attorney General, the Supreme Court and the Congress, we believe an entirely different conclusion would have been reached. The fact that the record discloses that there are now a total of at least eighty-four recreational developments on national forest lands in which there is such a combination of the term permit and the revocable permit is convincing proof of their legality.<sup>14</sup> Many of these developments are ski developments making use of maximum acres of the term permit plus revocable permits for additional acreage in amounts in some cases in excess of 6,000 acres. See the United States Forest Service tabulation in Appendix, Brief of Amicus Curiae Ski Association. It seems apparent, as was obvious to both Senate and House Committees, that the eighty-acre long-term permit was a necessity to obtain proper financing for substantial permanent improvements, while developments of less magnitude and permanency, such as trails, slopes, corrals, could be placed upon lands held under revocable permits.<sup>15</sup> We find no indication in those reports that ski lifts are limited to the term permits. The planned development in the instant case discloses that most major improvements are to be located upon lands held under the eighty-acre term permits while lifts and trails will be in-

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<sup>14</sup>Affidavit of W. S. Davis, Assistant Regional Forester, California Region, Record p. 238. See *Udall v. Tallman*, 380 U.S. 1 (1965), which holds that great deference must be given to interpretations of statutes of officers or agencies charged with their administration.

<sup>15</sup>See Senate Report No. 2511, Record p. 298; House Report No. 2792, Record p. 293.



stalled "throughout about 13,000 acres."<sup>16</sup> Evidence of great concern for the ecology of the area and the preservation and conservation of natural beauty and environmental features appears throughout the planning reports attached as exhibits. We find little or no likelihood of success in opposing the proposed development upon the ground that there would be an illegal use of term and revocable permits.

### *A. Permit for Highway*

The district court next discusses the proposal of the Secretary of Interior to issue a permit to the State of California to construct a segment of roadway through the national park. The road proposed is one from an existing state highway (Cal. 198) to Mineral King. No cases have been cited to illustrate the alleged impropriety of this permit to cross 9.2 miles of national park lands in the twenty mile route from Three Rivers to Mineral King. We know of none. In fact, there is an existing road from Three Rivers to Mineral King which traverses the same park. That road is a narrow substandard roadway with sharp switchbacks rising from an elevation of 1,160 feet at its junction with Route 198 to an elevation of 7,830 feet at Mineral King. Most of it has oiled surface with a portion graded only. It does not qualify for state maintenance (Record 101). The proposed road follows the alignment of the old road to some extent and substantially parallels it in others. The record shows a great deal of concern in its planning for preservation of aesthetic and

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<sup>16</sup>The gross acreage of Sequoia National Forest is 1,178,767 acres, which does not include areas within Sequoia National Park or King's Canyon National Park.

ecological values. The defendant Superintendent of the National Park concerned has stated under oath that the construction will be engineered.

“ . . . so that there will be a minimum impact on the national park values. The alignment of the road will be carefully selected to protect the Sequoia trees, natural areas, existing drainage ways, and the overall ecology of the area.” (Record 251; see also as to Sequoia trees and wild-life, Record p. 103-104.)

No question is raised as to the wide discretion given to the Secretary of the Interior in managing national parks to construct and improve roads and trails therein. See 16 U.S.C. § 8. We know of no law and find little logic in a contention that a twisting, substandard, inadequate road through 9.2 miles of the park is legal but that an improved all weather two lane highway along a new but approximately parallel alignment is illegal. No authorities have been cited in support of such a position. We cannot find in the appellee's contentions concerning this proposed road any degree of substantiality.

#### *B. Permit for Transmission Line*

Although not alleged in the complaint, appellee has questioned in its brief and the district court has alluded to the proposal of the Secretary of the Interior to grant permission for a right of way for a power line to provide electrical power for uses in connection with the project. Again, with deference, we fail to find this a substantial issue upon which to base the grant of a preliminary injunction. It seems unlikely that the appellee could prevail as to such a contention. Under 16 U.S.C. § 5 authority is

clearly provided to the Department of the Interior in its management of parks to grant permits and easements for rights of way for "electrical poles and lines for the transmission and distribution of electrical power." It is suggested, however, that under 16 U.S.C. § 45 (c) such a permit may not be issued without an act of Congress. This latter section does apply specifically to Sequoia National Park. It recognizes in the first portion of the section, existing valid claims for homesteads, mineral rights or rights for any other purposes whatsoever; it then gives to the Secretary authority to issue permits for timber cutting and grazing and concludes with a proviso that:

"... no permit, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits of said park as constituted by said sections, shall be granted or made without specific authority of Congress."

The Secretary contends that this section was intended to apply only to the construction and development of hydroelectric projects and related facilities including power lines. In the context of 16 U.S.C. § 5 and the unlikely intention to require an act of Congress for each electrical line within the park we accept the argument of the Secretary as convincing.

### *C. Public Hearings*

Finally, the trial court pointed to the contention of the appellee that no public hearings were ever held with respect to the highway. The existence of any such re-

quirement upon the Secretary of Interior or the Secretary of Agriculture is unclear. It does appear, however, that there was a hearing on this project in 1953. It also appears that there was a public hearing on August 10, 1967. (Record p. 96; 111; 230). The hearing was held by the California Division of Highways which would have been the permittee and was working closely with Agriculture and Interior. It is described in Exhibit F as having been a "well-publicized" public hearing attended by approximately 210 persons including California Assemblymen or their representatives, members of the Boards of Supervisors of Kern County and Tulare County, the Superintendent of Sequoia National Park, the Supervisor of Sequoia National Forest, representatives of fish and game, forest service, Federal Water Pollution Control Administration and civic and public organizations. The Sierra Club was present. It does not appear that the proposed roadway was any clandestine project. As a matter of fact, it does not appear that a permit was issued until more than a year later and then subject to agreement upon design standards. The matter of public hearings cannot be considered a substantial factor in this proceeding.

#### *D. The National Game Refuge*

A portion of the land within the area under consideration has been designated as a National Game Refuge. It has been suggested that this project would somehow interfere with the refuge and be in excess of authority. The act establishing the refuge declares that:

"The hunting, trapping, killing, or capturing of birds and game or other wild animals upon the lands of

the United States within the limits of said area shall be unlawful."

except under regulations of the Secretary of Agriculture.<sup>17</sup> We find no substance in this argument.

The appellee has not shown with any degree of certainty that it will or can succeed. Neither has it shown that it, or its members or anyone else will suffer irreparable injury. This is not a case "clearly warranting" the grant of a preliminary injunction. *Dymo Industries, Inc. v. Tapeprinter, Inc.*, *supra*. 326 F.2d at 143. The nation's natural resources are not the property of any particular group. One of the basic social ills of today is that we have too many people living too close together. It appears that the friction thus created is becoming increasingly abrasive. The satisfaction of the basic necessities of such a population creates environmental problems which are not within the expertise of this court. We cannot say, however, that the Secretary of Agriculture and the Secretary of the Interior have made an arbitrary and capricious judgment in determining to make available a vast area of incomparable beauty to more people rather than to have it remain inaccessible except to a rugged few.

The Order granting the preliminary injunction is vacated and the cause is remanded for further proceedings in conformity herewith.

HAMLEY, J. (Concurring):

In my view Sierra Club has standing to prosecute this lawsuit. It seems to me that the rationale of recent Su-

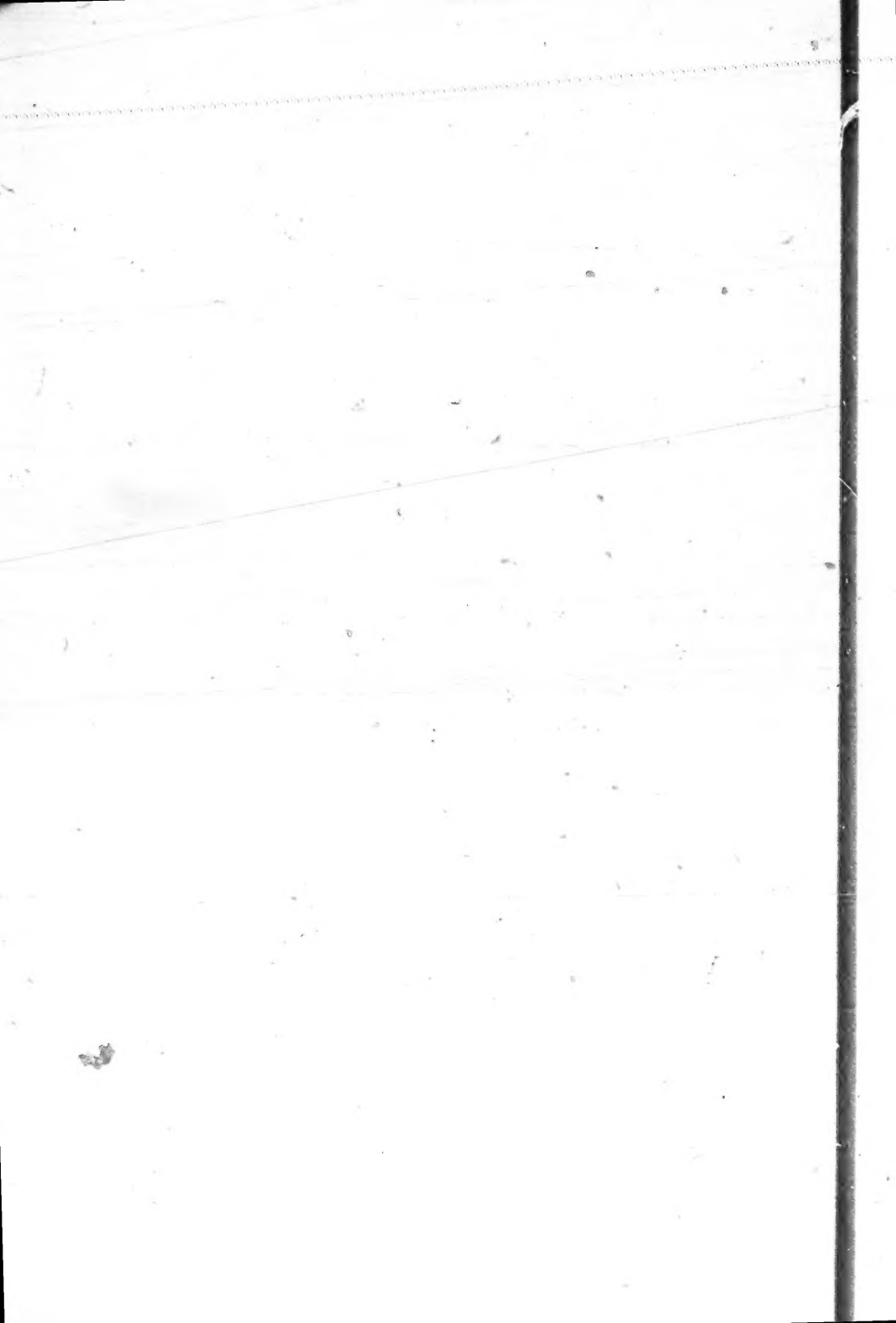
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<sup>17</sup>16 U.S.C. § 688.

preme Court pronouncements in this area, if not the precise holdings, call for such a determination. In *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 154 (1970), as the majority itself notes, the Supreme Court made it clear that the element of legal wrong need not be economic in nature, but may be aesthetic, conservational or recreational.

The Sierra Club represents thousands of members who have a deep interest in aesthetic, conservational and recreational values of a kind intended to be safeguarded by the statutes in question, and the regulations and practices thereunder. If these statutes are being disregarded, or the regulations and practices thereunder are invalid, and the result is that the described values are being undermined or disregarded, it seems to me the Sierra Club members may assert that a legal wrong is being inflicted upon them—a wrong which their chosen organization has standing to resist in this lawsuit.

However, for the reasons stated in the last section of the majority opinion, under the heading "The merits," I am convinced that the granting of the preliminary injunction amounted to an abuse of discretion and therefore must be reversed. The trial court acted with painstaking care which is deserving of high commendation, but, in my view, there is an inadequate legal foundation for the order entered.





**Supreme Court of the United States**

**No. 939 ----- , October Term, 19 70**

**Sierra Club,**

**Petitioner,**

**v.**

**Rogers C. B. Morton, Individually, and as  
Secretary of the Interior of the United  
States, et al.**

**ORDER ALLOWING CERTIORARI. Filed February 22, 1971.**

**The petition herein for a writ of certiorari  
to the United States Court of Appeals for the Ninth  
Circuit is granted.**